

Office of Hearings and Appeals  
3601 C Street, Suite 1322  
P. O. Box 240249  
Anchorage, AK 99524-0249  
Ph: (907)-334-2239  
Fax: (907)-334-2285

**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 11-FH-278  
 )  
 Claimant. ) Division Case No. [REDACTED]  
 )  
 \_\_\_\_\_ )

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) applied for Interim Assistance benefits on May 31, 2011. (Ex. 1) On June 28, 2011, the Division sent the Claimant notice his Interim Assistance application was denied. (Ex. 4.0) The Claimant requested a Fair Hearing on August 1, 2011. (Ex. 5)

This Office has jurisdiction pursuant to 7 AAC 49.010.

The Claimant's hearing was held on August 30, 2011. The Claimant attended the hearing telephonically; he represented himself and testified on his own behalf. [REDACTED], Public Assistance Analyst with the Division, attended in person; she represented the Division and testified on its behalf.

**ISSUE**

The Division denied the Claimant's May 31, 2011 Interim Assistance application on June 28, 2011 because his Social Security Supplemental Security Income application had been denied by the Social Security Administration at the initial determination level, even though the Claimant had filed a timely appeal from the Social Security Administration denial. The Division did not present any evidence regarding whether the Claimant was medically or psychiatrically disabled. In addition, the Division did not present any evidence contradicting the Claimant's evidence regarding his claimed disability. Instead, the Division only presented its legal argument on the effect of the Social Security Administration's initial denial.

The Claimant argued that he was disabled and unable to work due to his Bipolar Disorder.

The resulting issues are:

1. Does the Social Security Administration's initial denial of the Claimant's Supplemental Security Income application require that the Division deny the Claimant's Interim Assistance application when the Claimant has timely appealed the Social Security Administration's denial?
2. Is the Claimant eligible for Interim Assistance because he is "likely to be found disabled by the Social Security Administration?" *See* 7 AAC 40.180(b)(1).

### **SUMMARY OF DECISION**

1. An applicant for Interim Assistance may not have his application denied based upon the Social Security Administration's initial denial of his Supplemental Security Income application, unless he has either exhausted his internal appeal rights within the Social Security Administration or did not timely appeal from the Social Security Administration's initial denial of his Supplemental Security Income application. *See* AS 47.25.455; 7 AAC 40.190(a). Because the Claimant has not exhausted his internal appeal rights within the Social Security Administration, the Division was not correct to summarily deny his Interim Assistance application based solely upon the Social Security Administration's denial of his Supplemental Security Income application.
2. The Claimant experiences a severe mental impairment, specifically Bipolar Disorder. His severe mental impairment meets or equals the applicable Social Security listing of impairments for affective disorders contained in 20 CFR 404 Subpart P, Appendix 1. Accordingly, pursuant to 7 AAC 40.180(b)(1), the Claimant is eligible for Interim Assistance because he is "likely to be found disabled by the Social Security Administration." The Division was therefore not correct when it denied the Claimant's May 31, 2011 Interim Assistance application.

### **FINDINGS OF FACT**

The following facts were proven by a preponderance of the evidence:

1. The Claimant is currently 35 years old (birth date [REDACTED]). (Ex. 1) He is literate in English, has a high school diploma, and one year of post-secondary education and vocational education. (Ex. 3.8)
2. The Claimant's primary work experience is as a server in a restaurant, and as an electrician's apprentice. (Ex. 3.6) In addition, he worked for approximately 4 months in 1999 in a temporary administrative position. *Id.* The last time the Claimant worked was in December 2010. *Id.*
3. The Claimant applied for Interim Assistance on May 31, 2011. (Ex. 1)
4. [REDACTED], ANP, completed a Preliminary Examination for Interim Assistance form (AD #2) on the Claimant's behalf on April 28, 2011. (Exs. 3.11 – 3.12) On the second page of the Preliminary Examination form, Ms. [REDACTED] diagnosed the Claimant with Bipolar Disorder and indicated that the Claimant was not expected to recover from the condition. (Ex. 3.12) The Preliminary

Examination form contains the specific statement that the Claimant “[r]ecently had to leave apprenticeship due to [mental illness], not able to structure day + function, moved in with parents.” *Id.*

5. [REDACTED], ANP and Dr. [REDACTED], Ph.D. completed a Preliminary Examination for Interim Assistance form (AD #2) on the Claimant’s behalf on May 31, 2011. (Exs. 3.2 – 3.3) On the second page of the Preliminary Examination form, Ms. [REDACTED] and Dr. [REDACTED] diagnosed the Claimant with Bipolar I Disorder (Code 296.7) and indicated that the Claimant was expected to take 12 months or longer to recover. (Ex. 3.3) The Preliminary Examination form contains the specific statement that “As a result of his anxiety + mood symptoms, his marriage ended and he moved in with his parents. He needs considerable assistance in structuring his day.” *Id.*

6. On June 16, 2011, the Division learned that the Claimant had applied for Supplemental Security Income benefits on April 20, 2011, that his application was denied by the Social Security Administration on May 6, 2011 at the initial determination level, and that he had appealed that denial on June 2, 2011. ([REDACTED] testimony; Exs. 2.1, 3.0)

7. On June 24, 2011, the Division determined that the Claimant’s Interim Assistance application should be denied due to the initial denial by the Social Security Administration of the Claimant’s Supplemental Security Income application. (Ex. 3.1)

8. On June 28, 2011, the Division sent the Claimant written notice that his Adult Public Assistance and Medicaid application was denied because he did “not meet the disability requirements for [Adult Public Assistance] and Medicaid. (Ex. 4.0) On August 22, 2011, the Division sent the Claimant a “corrective notice” that notified the Claimant that his Interim Assistance application was also denied, and that the reason for the denial of his Interim Assistance application was because his Supplemental Security Income application had been denied at the initial determination level. (Ex. 4.1)

9. The Claimant’s medical records show the following:

- a. He was hospitalized in 1998 due to Bipolar I Disorder, Manic phase. (Exs. 3.22, 3.57)
- b. An initial intake assessment (not a psychiatric evaluation) was completed for the Claimant on August 28, 2009 by a master’s level therapist (i.e. not a psychiatrist or a psychologist). (Exs. 3.27 – 3.32) That assessment diagnosed the Claimant with Bipolar I Disorder, with a Global Assessment of Functioning score of 49. (Ex. 3.31)
- c. A psychiatric evaluation was completed for the Claimant on October 14, 2009. (Exs. 3.22 – 3.24) That psychiatric evaluation diagnosed the Claimant with Bipolar Disorder, with a Global Assessment of Functioning score of 50. (Ex. 3.24) The evaluation states: “He has history of a manic episode and going long periods of work without sleep. He also reports anxiety symptoms that are interfering with his ability to go to work.” *Id.*
- d. His March 15, 2011 medical appointment notes read that he was depressed, had good grooming and hygiene, and had no suicidal thoughts. (Ex. 3.40)

- e. His April 14, 2011 medical appointment notes read that he had no suicidal thoughts, and that his mother prompts him to improve his grooming, and that he takes a shower approximately once a week. (Ex. 3.39)
- f. His May 18, 2011 medical appointment notes read that his mood was fearful and that his anxiety keeps him from doing things that he enjoys. (Ex. 3.37)
- g. His June 10, 2011 medical appointment notes read that he has “more good days than bad” and that his hygiene was good. (Ex. 3.36)

10. The Claimant testified as follows:

- a. He has no physical disabilities.
- b. He has not been hospitalized since 1998 or 1999.
- c. He started feeling out of control in October 2009. He found himself “frozen” at work and missing work a lot.
- d. He was laid off on several occasions in 2010, and he lost the ability to return to work because he could not make himself go to work.
- e. He found himself “frozen in fear” and unable to work because he was so depressed that he had neither the motivation nor the energy to work. He has tried several anti-depressants and they have not worked.
- f. By December 2010, he had lost his job and his electrical apprenticeship.
- g. His marriage fell apart. He moved back in with his parents.
- h. He tried to return to waiting tables, because he was so familiar with it. He began missing work right away. His last day of work was December 31, 2010. He has not been able to think about returning to work since.
- i. He has poor grooming habits. He has difficulty taking a shower, which he can’t explain.
- j. It is hard for him to leave the home. He tries to leave the house and accompany his mother when she goes shopping.
- k. He has one friend who he manages to see occasionally and they play video games.
- l. Its hard for him to focus on anything, and engage in social activities.
- m. He is taking medications for his Bipolar Disorder. When he first started taking Bipolar Disorder medications in 1998, the medications were working. His Bipolar Disorder was

somewhat controlled in 2009. The Bipolar Disorder medications are not working for him now.

- n. His medical records are overly optimistic because he doesn't like telling his medical/psychiatric providers how poorly he is doing.

## PRINCIPLES OF LAW

### I. Burden of Proof and Standard of Proof

A party who is seeking a change in the status quo has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985); *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

### II. Interim Assistance Program Requirements

The Alaska Public Assistance program provides financial assistance to "aged, blind, or disabled needy [Alaska] resident[s]." AS 47.25.430. Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income benefits. 7 AAC 40.170(a).<sup>1</sup> Once an applicant is approved for federal Supplemental Security Income benefits, s/he is then eligible to receive Adult Public Assistance benefits. 7 AAC 40.030(a); 7 AAC 40.170(a).

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the federal Social Security Administration to approve their Supplemental Security Income application. 7 AAC 40.170(a) and (b); AS 47.25.455.

The Social Security Supplemental Security Income eligibility determination process contains multiple levels, at which an application may be either approved or, if denied, appealed to the next level:

1. The initial determination level; if the application is denied at this level, the applicant may request a reconsideration of that denial.
2. The reconsideration level; if reconsideration is denied, the applicant may appeal the denial to the administrative law judge level.
3. The administrative law judge level; if the administrative law judges denies the application, the applicant may appeal to the Appeals Council.

---

<sup>1</sup> Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

4. The Appeals Council, which is the final decision making authority within the Social Security Administration. An appeal from a denial at the Appeals Council level must be made to the Federal District Court.

20 CFR 416.1400(a).

The Alaska statute, AS 47.25.455, authorizing Interim Assistance payments “requires state payment of interim assistance through the [Supplemental Security Income] appeals process until a final [Supplemental Security Income] eligibility determination is made administratively.” *Moore v. Beirne*, 714 P.2d 1284, 1287 (Alaska 1986). The Alaska regulations provide that “Interim assistance will end upon the division’s receipt of notification of the Social Security Administration’s final determination of eligibility or ineligibility for [Supplemental Security Income] benefits.” 7 AAC 40.190(a). That same regulation further provides that Interim Assistance payments continue until an applicant is either approved for Supplemental Security Income, has failed to administratively appeal an interim adverse Supplemental Security Income decision, has abandoned or withdrawn his appeal, or has received “a notice of dismissal or an adverse decision from the Social Security Appeals Council.” 7 AAC 40.190(a)(1) – (4).

The *Alaska Adult Public Assistance Manual* reads:

An initial finding of no blindness or disability by [the Social Security Administration] forms the basis for the denial of an [Adult Public Assistance] application. Written notice of APA denial must be sent to the [Adult Public Assistance] applicant whenever a case worker becomes aware of an initial [Social Security Administration] finding of no blindness or disability. The denial notice must inform the client that the [Adult Public Assistance] application is denied, and that continued eligibility for Interim Assistance may still exist if the individual appeals the [Supplemental Security Income] decision. If the appeal process results in a final finding of blindness or disability, the [Adult Public Assistance] application shall be reevaluated.

*Alaska Adult Public Assistance Manual* Section 426-6 B.

In return for the State paying Adult Public Assistance applicants Interim Assistance pending Social Security Administration approval, the applicants agree, if and when the Social Security Administration approves them for Supplemental Security Income, to reimburse the State for the Interim Assistance payments they have received from the State. 7 AAC 40.375(c) and (d); AS 47.25.455(c). The source for the repayment is the Claimant’s first Supplemental Security Income payment, which the applicants are required to assign to the State. 7 AAC 40.375(c).

The Social Security Administration, in turn, before it agrees to assign an applicant’s first Supplemental Security Income payment over to the State for reimbursement of Interim Assistance payments, requires that the State enter into an agreement with the Social Security Administration. 20 CFR 416.1901; 20 CFR 416.1910. The applicable Social Security regulations that control the reimbursement to the State of Interim Assistance payments specifically define “Interim Assistance” as “assistance the State gives

you . . . beginning with the first month for which you are eligible for [Supplemental Security Income] benefits.” 20 CFR 415.1902.

The Alaska *Adult Public Assistance Manual* states that “[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income].” *Adult Public Assistance Manual* Section 426-2C.

Alaska Adult Public Assistance regulation 7 AAC 40.030(a) reads:

An applicant must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416, and the eligibility requirements set forth in this chapter. If the requirements of this chapter conflict with requirements of the [Supplemental Security Income] program, the requirements of this chapter apply unless the requirements of the [Supplemental Security Income] program specifically supersede inconsistent state program requirements.

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.” 7 AAC 40.180(b)(1). Pursuant to 7 AAC 40.180(b), the Division is to determine the likelihood of whether the applicant would “be found disabled by the Social Security Administration.” The Interim Assistance regulation, 7 AAC 40.180, contains a number of specific elements, which an applicant must satisfy in order to establish Interim Assistance eligibility.<sup>2</sup> These

---

<sup>2</sup> **7 AAC 40.180. Initial determination of disability.** (a) An applicant whose disability is being determined by the department under 7 AAC 40.170(b) must be examined by a psychiatrist or other physician who has entered into a current provider agreement under 7 AAC 43.065. The results of the examination must be provided on a form approved by the department.

- (b) The department will make a determination of whether the applicant is disabled based on:
- (1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets
    - (A) The SSI program's presumptive disability criteria under 20 C.F.R. 416.934, as revised as of April 1, 2005, and adopted by reference; or
    - (B) Social Security Administration disability criteria for the listings of impairments described in 20 C.F.R. 404, subpart P, appendix 1, as revised as of April 1, 2005, and adopted by reference;
  - (2) medical evidence provided by the applicant or obtained by the department;
  - (3) other evidence provided by the applicant under 7 AAC 40.050, if applicable; and
  - (4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.

elements are not one hundred percent identical to the elements that a federal Supplemental Security Income applicant must satisfy. *See* 20 CFR 416.920. However, the following factors demonstrate that the Division is required to adhere to the federal Supplemental Security Income eligibility requirements contained in 20 CFR 416:

1. The Division, as part of its entering into an Interim Assistance reimbursement agreement with the Social Security Administration, agreed to provide Interim Assistance payments to persons who are “eligible” for Supplemental Security Income as defined by the Social Security Administration. *See* 20 CFR Sections 416.1901, 1902, and 1910.
2. Alaska regulation 7 AAC 40.180(b)(1) reads that an applicant must be “likely to be found disabled by the Social Security Administration.”
3. Alaska regulation 7 AAC 40.030(a) reads that Adult Public Assistance (and hence Interim Assistance) applicants “must meet the eligibility requirements of the [Supplemental Security Income] program contained in Title XVI of the Social Security Act . . . and in 20 C.F.R. Part 416.”
4. The Division interprets the Interim Assistance regulations as requiring it to follow Supplemental Security Income eligibility rules as evidenced by the Alaska *Adult Public Assistance Manual* statement that “[t]he [Adult Public Assistance] program uses the same definitions of disability and blindness as [Supplemental Security Income].” *Adult Public Assistance Manual* Section 426-2C.

The Social Security disability determination process for Supplemental Security Income eligibility involves a step-by-step “sequential evaluation process,” which is described in 20 CFR 416.920:

1. Is the applicant performing substantial gainful employment as defined by the applicable Social Security regulations? If so, the applicant is not disabled. 20 CFR 416.920(a)(4)(i). If the

---

(c) In determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section, the department will consider whether the

- (1) the applicant's condition is listed as an impairment category described in (b)(1)(B) of this section;
- (2) medical information obtained under (b) of this section documents the applicant's impairment;
- (3) impairment affects the applicant's activities of daily living;
- (4) the applicant can perform any other work, including sedentary work; and
- (5) the applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.



applicant is not performing substantial gainful employment, then the applicant must satisfy the next question.

- 2(a). Is the applicant's impairment severe? A severe impairment is one that "significantly limits [a person's] physical or mental ability to do basic work activities." 20 CFR 416.920(c). Medical evidence, which consists of "signs, symptoms, and laboratory findings, not only [the applicant's] statement of symptoms," is required to establish an applicant's impairment. 20 CFR 416.908. If an applicant has multiple impairments, the combined effect of all the impairments must be considered in determining whether an applicant is severely impaired. 20 CFR 416.923. If the impairment is not severe, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If an applicant is severely impaired, then the applicant must satisfy the next question.
- 2(b). Has the applicant's severe impairment lasted for a continuous period of at least 12 months, or can it be expected to last for a continuous period of at least twelve months? 20 CFR 416.909. If the severe impairment does not satisfy this duration requirement, the applicant is not disabled. 20 CFR 416.920(a)(4)(ii). If the severe impairment satisfies this duration requirement, the applicant must satisfy the next question.
3. Does the applicant's severe impairment meet or medically equal the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1? If it does, the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). If the severe impairment does not meet or medically equal the listing of impairments, then the applicant must satisfy the next question.
4. Does the applicant's severe impairment prevent him from doing his previous relevant work? This involves an evaluation of the applicant's residual functional capacity. If the applicant is not prevented from performing his previous relevant work, the applicant is not disabled. 20 CFR 416.920(a)(4)(iv). Otherwise, the applicant must satisfy the next question.
5. Is the applicant capable of performing other work? Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience. If the applicant is not capable of performing other work, he is disabled. 20 CFR 416.920(a)(4)(v).

### ANALYSIS

The issue in this case is whether the Division was correct when it, on June 28, 2011, denied the Claimant's May 31, 2011 Interim Assistance application. Because Claimant is an applicant for benefits, he is the party seeking to change the status quo. The Claimant therefore has the burden of proof by a preponderance of the evidence.

There are two sub-issues in this case:

- A. Does the Social Security Administration’s initial denial of the Claimant’s Supplemental Security Income application require that the Division deny the Claimant’s Interim Assistance application when the Claimant has appealed the Social Security Administration’s initial denial?
- B. Is the Claimant eligible for Interim Assistance because he is “likely to be found disabled by the Social Security Administration?” *See* 7 AAC 40.180(b)(1).

A. Social Security Administration Denial.

The Claimant’s Supplemental Security Income application was denied at the Social Security Administration’s initial determination level. *See* Finding of Fact 6 above. The Claimant filed an appeal from the Social Security denial. *Id.* The Division then denied the Claimant’s Interim Assistance application because the Social Security Administration denied his Supplemental Security Income application at the initial determination level. *See* Findings of Fact 7 and 8 above. The issue that arises from these established facts is a purely legal one: does the Social Security Administration’s denial of the Claimant’s Supplemental Security Income application require that the Division deny the Claimant’s Interim Assistance application when the Claimant has appealed the Social Security Administration’s denial?

The initial determination level is the very first level of the Social Security Administration’s Supplemental Security Income application’s review process. *See* 20 CFR 416.1400(a). The Claimant appealed the initial denial to the next step in the Social Security Administration’s review process. *See* Finding of Fact 6 above.

The Alaska Interim Assistance statute, AS 47.25.455, as interpreted by the Alaska Supreme Court, “requires state payment of interim assistance through the [Supplemental Security Income] appeals process until a final [Supplemental Security Income] eligibility determination is made administratively.” *Moore v. Beirne*, 714 P.2d 1284, 1287 (Alaska 1986). The final administrative decision within the Social Security System is made by the Appeals Council. *See* 20 CFR 416.1400(a).

7 AAC 40.190(a) clearly states that “Interim assistance will end upon the division’s receipt of notification of the Social Security Administration’s **final** determination of eligibility or ineligibility for [Supplemental Security Income] benefits.” (emphasis added). An applicant is potentially eligible for Interim Assistance benefits until he has failed to administratively appeal an interim adverse Supplemental Security Income decision, has abandoned or withdrawn his appeal, or has received “a notice of dismissal or an adverse decision from the Social Security Appeals Council.” 7 AAC 40.190(a)(1) – (4). The Division’s own policy statement, as expressed in its *Adult Public Assistance Manual*, is that when an applicant’s Supplemental Security Income application is denied, “that continued eligibility for Interim Assistance may still exist if the individual appeals the *SSI* decision.” *Alaska Adult Public Assistance Manual* Section 426-6 B.

The law and Division policy, as recited above, are in accord: an applicant is potentially eligible for Interim Assistance benefits and may not have his Interim Assistance application denied based upon Social Security initial denial of his Supplemental Security Income application, as long as he is

pursuing an appeal within the Social Security System. As a purely legal matter, the Division was not correct when it denied the Claimant's Interim Assistance application on June 28, 2011 because his Supplemental Security Income application was denied by the Social Security Administration at the initial determination level.

Because the Division was not correct to summarily deny the Claimant's May 31, 2011 Interim Assistance application, it is necessary to proceed to the next issue, whether the Claimant is likely to be found disabled by the Social Security Administration."

B. Is the Claimant "likely to be found disabled by the Social Security Administration?"

Applications for Interim Assistance are governed by 7 AAC 40.180, which requires that an applicant appear "likely to be found disabled by the Social Security Administration." 7 AAC 40.180(b)(1). This requires that an applicant have a disabling impairment<sup>3</sup> according to Social Security criteria. 7 AAC 40.180(b). The multi-step Social Security Administration disability analysis follows:

1. Current Employment.

The last time the Claimant worked was in December 2010, i.e. he is currently unemployed. *See* Finding of Fact 2 above. He therefore satisfies the first step of the Social Security disability analysis: he is not engaged in substantial gainful employment as defined by the applicable Social Security regulations. *See* 20 CFR 416.920(a)(4)(i). It is therefore necessary to proceed to the next step, and determine if he is severely impaired.

2(a). Severe Impairment.

A review of the medical evidence in this case demonstrates that the Claimant has a psychological diagnosis of Bipolar Disorder. *See* Findings of Fact 4 and 5 above. He does not experience any physical disabilities. *See* Finding of Fact 10(a) above.

In determining whether an applicant has a severe mental impairment, the Social Security regulations require that the mental impairment be rated to determine how it affects four categories: activities of daily living,<sup>4</sup> social functioning,<sup>5</sup> concentration, persistence and pace,<sup>6</sup> and episodes of

---

<sup>3</sup> The Division presented no evidence on this issue. Instead, it solely relied upon the fact that the Claimant's Supplemental Security Income application had been denied at the initial determination level by the Social Security Administration.

<sup>4</sup> "Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene." 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(1).

<sup>5</sup> "Social functioning refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. . . . You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation." 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(2).

decompensation.<sup>7</sup> 20 CFR 416.920a(c)(3). The categories of activities of daily living, social functioning, and concentration, persistence, and pace are examined to determine how the mental impairment limits each category: the ratings for each category are none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A “marked limitation” exists when there is a serious interference with the “ability to function independently, appropriately, effectively, and on a sustained basis.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C). An applicant is an acceptable source of information about how his mental impairment limits his functioning. 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(D)(1)(b).

If an applicant has a rating of none or mild in the first three categories (activities of daily living, social functioning, concentration, persistence and pace), and a rating of none in the episodes of decompensation, he is not severely impaired. 20 CFR 416.920a(d)(1). Otherwise, he is severely impaired. *Id.*

The Claimant in this case only has one documented episode of decompensation, where he was hospitalized in 1998. *See* Finding of Fact 9(a) above. Because this was a number of years ago, this rates as a “none.”

The evidence in this case shows that the Claimant is markedly affected in his activities of daily living: he doesn’t groom himself, unless cued, takes a shower once a week, has difficulty leaving his home, and is unable to make himself go to work. *See* Findings of Fact 9(e), 10(c), (d), (e), (h), (i), and (j). In addition, Ms. █████ ANP noted on his April 28, 2011 Preliminary Examination form that he had lost his apprenticeship due to his mental illness, and was not able to structure his day and functioning. *See* Finding of Fact 4 above. This is a marked limitation in his activities of daily living.

The evidence in this case shows that the Claimant is also markedly limited in his areas of social functioning, as evidenced by the fact his marriage has ended, he had to move back in with his parents, has difficulty leaving the home, has one friend, and has difficulty engaging in social activities. *See* Findings of Fact 4, 5, 10(g), (j), (k), and (l) above. There is no evidence in the record regarding the Claimant’s concentration, persistence, and pace at work: he lost his jobs because he could not make himself go to work, i.e. there is no indication that he lost his employment because he could not do the work itself.

---

<sup>6</sup> “Concentration, persistence, or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(3).

<sup>7</sup> Episodes of decompensation consist of “exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence or pace.” 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(4). “Repeated episodes” of decompensation means three episodes within 1 year, each lasting for at least two weeks. *Id.* However, more frequent shorter episodes may also fulfill this requirement. *Id.* Episodes of decompensation are rated based on frequency: none, one or two, three, and four or more. 20 CFR 416.920a(c)(4).

The Claimant therefore has marked limitations in the categories of activities of daily living, and social functioning. Because there is no evidence to show a limitation in concentration, persistence, and pace, he is not limited in that category. He also has a “none” in episodes of decompensation because his hospitalization was in 1998, i.e. it occurred too far in the past to consider. However, because he has marked limitations in the two categories of activities of daily living and social functioning, he does qualify as being severely impaired. *See* 20 CFR 416.920a(d)(1).

Because the Claimant has a severe mental impairment, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe mental impairment have lasted or can be expected to last for a continuous period of at least 12 months.

2(b). Duration.

The April 28, 2011 Preliminary Examination form indicates that the Claimant is not expected to recover from his Bipolar Disorder. *See* Finding of Fact 4 above. The May 31, 2011 Preliminary Examination form indicates that the Claimant’s Bipolar Disorder was expected to last for 12 months or longer. *See* Finding of Fact 5 above. In addition, he was hospitalized in 1998 due to his Bipolar Disorder. *See* Finding of Fact 9(a) above. Further, he had Bipolar diagnoses in August and October 2009. *See* Findings of Fact 9(b) and (c) above. As such, Claimant’s mental impairment has lasted for longer than 12 months and can be expected to last for over 12 months. The durational requirement is satisfied.

Because the Claimant’s severe mental impairment has lasted for a period of longer than 12 continuous months and can be expected to persist for longer than 12 months, it is necessary to proceed to the next step of the Social Security disability analysis and determine if his severe physical impairment meets or medically equals the listing of impairments contained in the Social Security regulations located at 20 CFR Pt. 404, Subpt. P, App. 1.

3. Meeting or Equaling the Social Security Impairment Listings.

The Claimant’s severe mental impairment consists of his Bipolar Disorder. The Social Security system classifies this condition under the general category of mental impairments, 20 CFR Pt 404, Subpart P, Appendix 1, § 12.01 *et. seq.* The specific listing for Bipolar syndrome is located at affective disorders, 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

Subsection A of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04 requires, for Bipolar syndrome to be present, that the Claimant experience “Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes).” The Claimant was hospitalized in 1998 for Bipolar I Disorder, Manic phase. *See* Finding of Fact 9(a). His October 14, 2009 psychiatric evaluation diagnosed him with Bipolar disorder. *See* Finding of Fact 9(c) above. His medical appointment notes, as of March 15, 2011, state that he is depressed. *See* Finding of Fact 9(d) above. That evidence shows the Claimant has a history of manic episodes and a current history of depression. He therefore has had both manic and depressive syndromes in the past and has a current depressive syndrome, which satisfies the initial test required by Subsection A of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

In addition to satisfying the above test for Bipolar syndrome, the Claimant's severe mental impairment must also result in two of the following four factors that demonstrate the Claimant is functionally limited:

- a. Marked limitations in his activities of daily living;
- b. Marked limitations in maintaining social functioning;
- c. Marked limitations in maintaining concentration, persistence or pace; or
- d. Repeated episodes of decompensation, each of extended duration.

Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

A "marked limitation" exists when there is a serious interference with the ability to function. 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C). "Decompensation" consists of "exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence or pace." 20 CFR Pt 404, Subpart P, Appendix 1, § 12.00(C)(4). "Repeated episodes" of decompensation means three episodes within 1 year, each lasting for at least two weeks. *Id.* However, more frequent shorter episodes may also fulfill this requirement. *Id.*

The Social Security disability regulations require that a Claimant must meet the threshold level of a marked limitation/number of episodes of decompensation for two of the four limitation factors (daily living, social functioning, concentration, persistence or pace, and decompensation) in order to meet or equal the Social Security listings for mental impairments/affective disorders. Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

A review of the evidence in this case shows the Claimant meets this threshold. As discussed above, the Claimant is markedly limited in the categories of activities of daily living and social functioning. Because the Claimant is markedly limited in his activities of daily living and his social functioning, he meets the minimum requirement that he satisfy two of the four limitation factors contained in Subsection B of 20 CFR Pt 404, Subpart P, Appendix 1, § 12.04.

In summary, the Claimant has met his burden of proof, by a preponderance of the evidence, and demonstrated that he meets or equals the Social Security disability listing for affective disorders, specifically Bipolar Disorder. Under the Social Security disability rules, this means the applicant is disabled and no further inquiry is required. 20 CFR 416.920(a)(4)(iii). As a result, the Claimant is likely to be found disabled according to Social Security disability criteria. This means he is eligible for Interim Assistance as a result of his Bipolar Disorder. 7 AAC 40.180(b)(1). The Division was therefore not correct when it denied his May 31, 2011 application for Interim Assistance.

## CONCLUSIONS OF LAW

1. The Claimant appealed the Social Security Administration's initial denial of his Supplemental Security Income application. Consequently, the Division was not correct when it summarily denied the Claimant's May 31, 2011 Interim Assistance application on June 28, 2011 because the Social Security Administration denied his Supplemental Security Income application at the initial determination level.
2. The Claimant has the burden of proof in this case by a preponderance of the evidence. The Claimant has satisfied his burden of proof and established the following:
  - a. The Claimant is not engaged in substantial gainful employment.
  - b. The Claimant has a severe mental impairment, Bipolar Disorder, which has lasted for longer than 12 months and which can be expected to last for a period of longer than 12 months.
  - c. The Claimant's severe impairment, Bipolar Disorder, meets or equals the Social Security Disability listings for affective disorders contained in 20 CFR Section 404, Subpart P, § 12.04.
  - d. As a result, the Claimant is "likely to be found disabled by the Social Security Administration." *See* 7 AAC 40.180(b)(1).

## DECISION

The Division was not correct when it denied the Claimant's May 31, 2011 Interim Assistance application on June 28, 2011.

## APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision. To appeal, send a written request directly to:

Director of the Division of Public Assistance  
Department of Health and Social Services  
PO Box 110640  
Juneau, AK 99811-0640

DATED this 31st day of October, 2011.

\_\_\_\_\_/Signed/  
Larry Pederson  
Hearing Authority

Certificate of Service

I certify that on this 31st day of October, 2011, true and correct copies of the foregoing were sent to:  
Claimant by U.S.P.S First Class Certified Mail, Return Receipt Requested  
and to the following by secure e-mail:

██████████, Public Assistance Analyst  
██████████, Public Assistance Analyst  
██████████, Policy & Program Development  
██████████, Staff Development & Training  
██████████, Administrative Assistant II

---

J. Albert Levitre, Jr.  
Law Office Assistant I