

While incarcerated, Mr. J had to share a cell with another inmate, but they mostly ignored each other.⁸ He currently has one friend who lets Mr. J cook meals in his kitchen and occasionally use his shower. He has known this person for six or seven years, and he can be with his friend. However, mostly Mr. J just eats his meal and then leaves, and there isn't much talking.⁹

Mr. J has not been able to work for 13 years, except that while incarcerated he worked at the laundry picking up clothes and pushing a cart for about 15 minutes a day.¹⁰

Over the past few years, Mr. J's doctors have documented that he has schizoaffective disorder as well as a mood disorder.¹¹ While incarcerated, his health care providers noted a concern that he might be malingering. For example, one chart note says "Schizoaffective DO vs. Malingering for benefits."¹² However, they continued his medication which they likely would not have done if they did not believe his mental illness was real.¹³ Dr. Goddard, who treats Mr. J at No Name Community Mental Health Services, noted, "It appears that he has had mental illness since the time he was in the military and has self-medicated over the years trying to cope with this."¹⁴

III. Discussion

A. *Interim Assistance Eligibility*

Interim Assistance is a benefit available to individuals while they are waiting for the SSA to approve an application for Supplemental Security Income.¹⁵ Among other requirements, to receive Interim Assistance an applicant must be "likely to be found disabled by the Social Security Administration."¹⁶ Mr. J has the burden of proof on this issue.¹⁷

⁸ J Testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibits 3.39; 3.46; 3.79; 3.90.

¹² Exhibit 3.46.

¹³ *See* Exhibit 3.46 (continuing Prozac, lithium, and Risperdal).

¹⁴ Exhibit 3.91. Mr. J was in the military in 1973 and 1974. Exhibit 3.45.

¹⁵ 7 AAC 40.170(b); 7 AAC 40.375.

¹⁶ 7 AAC 40.180(b)(1).

¹⁷ 7 AAC 49.135

The SSA uses a five-step evaluation process in making its disability determinations.¹⁸ For Alaska's interim assistance determinations, however, only the first three of these steps are considered.¹⁹

Under the SSA evaluation process, each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.²⁰ The first step in this process looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the SSA will find that the applicant is not disabled.²¹ This finding is made regardless of the applicant's medical condition, age, education, or work experience.²²

At step two, the SSA considers the severity of the applicant's impairment. In order to be considered disabled, the impairment or combination of impairments must be severe, and must be expected to result in death or must have lasted or be expected to last at least 12 months.²³ If the impairment is not severe under this definition, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals the Listing of Impairments adopted by the SSA.²⁴ If it does, the applicant is disabled.²⁵

There is no dispute that Mr. J is not currently performing substantial gainful activity. It is also not disputed that he has a severe impairment that meets the durational requirement. Thus, to be eligible for APA benefits, Mr. J must show he is likely to be found by SSA to meet the applicable listing in effect in April of 2005.²⁶

B. Schizoaffective Disorder

Mr. J is diagnosed with both schizoaffective disorder and a mood disorder. Schizoaffective disorder is defined as an uninterrupted period of illness during which there are periods of major depression, manic episodes, or mixed episodes concurrent with

¹⁸ 20 CFR §416.920. This process is described in detail in OHA Case No. 11-FH-134 (Dept. of Health and Social Services 2011), pages 14 – 17; <http://aws.state.ak.us/officeofadminhearings/Documents/HSS/11-FH-134.pdf>.

¹⁹ See *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health & Social Services August 20, 2012); <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf>.

²⁰ 20 CFR § 416.920(a)(4).

²¹ 20 CFR § 416.920(a)(4)(i).

²² 20 CFR § 416.920(b).

²³ 20 CFR § 416.920(a)(4)(ii); 20 CFR §416.909.

²⁴ See 20 CFR § 404, Subpart P, Appendix 1 (listing). The division looks to the version of the listing that was in effect on April 1, 2005. 7 AAC 40.180(b)(1)(B).

²⁵ 20 CFR § 416.920(a)(4)(iii).

²⁶ 7 AAC 40.180(b)(1)(B).

symptoms of schizophrenia.²⁷ Mood disorders include different types of depression and bipolar disorders.²⁸

Whether a person is disabled due to schizoaffective disorder is analyzed under §12.03 of the listing. This section states

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; or
4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

²⁷ *Diagnostic and Statistical Manual of Mental Disorders*, 4th Ed. Text Revision (American Psychiatric Association 2000) (DSM-IV-TR), §295.70, pages 319 – 323.

²⁸ DSM-IV-TR, pages 345 – 428.

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The division concluded that Mr. J did not meet the requirements of this listing and denied his application for benefits. At the hearing, the division did not present any witnesses, and instead relied on Mr. J's medical records and the report written by its disability adjudicator, Jaimie Lang.²⁹ Ms. Lang's report focuses mainly on Mr. J's substance abuse disorder, and concludes that his addiction is under control.³⁰ She does not address his schizoaffective disorder in anything more than a conclusory manner.

While Mr. J may not meet the requirements to be considered disabled by his substance abuse disorder, he has met his burden of proving disability due to his schizoaffective disorder.³¹ As stated above, disability is established "when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

Mr. J meets the requirements in section A because there is medically documented evidence of hallucinations,³² and of emotional withdrawal or isolation.³³ To meet the part B requirement, he must meet the requirements of two out of the four subparts. While he has proven one of these subparts, he has not proven any of the other subparts. Marked difficulty means more than moderate, but less than extreme.³⁴ Mr. J has shown that he has more than moderate difficulty in maintaining social functioning,³⁵ but has not proven that he has more than moderate difficulty in activities of daily living,³⁶ or more than moderate difficulty in maintaining concentration, persistence, or pace.³⁷ Nor has he shown repeated episodes of

²⁹ The report is contained in Exhibit 3.1 – 3.4.

³⁰ Substance addiction disorders are addressed in §12.09 of the listings. One can meet this listing if the abuse causes symptoms of sufficient severity to meet one or more of the requirements in listing 12.02, 12.04, 12.06, 12.08, 11.14, 5.05, 5.04, or 5.08. *See* Listing 12.09, A – H.

³¹ Because he meets the requirements based on this diagnosis, it is unnecessary to consider whether he would also meet the requirements based on his mood disorder.

³² Listing 12.03(A)(1). In addition to Mr. J's testimony, hallucinations are documented in exhibits 3.57, 3.59, 3.82, and 3.91.

³³ Listing 12.03(A)(4). In addition to Mr. J's testimony, emotional withdrawal or isolation is documented in exhibits 3.84 and 3.91.

³⁴ Listing 12.00(C).

³⁵ Listing 12.03(B)(2).

³⁶ Listing 12.03(B)(1).

³⁷ Listing 12.03(B)(3).

decompensation of extended duration.³⁸ Accordingly, he can only be found disabled if he meets the requirements of §12.03(C).

Mr. J has a documented history of a chronic psychotic disorder lasting at least two years, and probably since 1974. He is just barely getting by, and even a minimal increase in mental demands – such as would occur if he had to associate with others in the work setting – would likely cause him to decompensate.³⁹ Mr. J has managed to cope with his mental illness with the help of medication, and by avoiding most social interactions. The ultimate question that the SSA looks at, and therefore what is looked at in determining eligibility for IA, is whether Mr. J is capable of substantial gainful employment. At the present time, he is not because any added mental demands would likely cause him to decompensate.

IV. Conclusion

Eligibility for Interim Assistance benefits is determined by whether the applicant is likely to be found disabled by the Social Security Administration. Mr. J has met his burden of proving he is likely to be found disabled. Accordingly, the division's determination is reversed.

Dated this 6th day of May, 2013.

Signed
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of June, 2013.

By: Signed
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]

³⁸ Listing 12.03(B)(4). Decompensation is defined as a temporary increase in symptoms along with a loss of adaptive functioning. Repeated episodes means three within one year, each lasting for at least two weeks. Listing §12.00(C)(4).

³⁹ Listing 12.03(C)(2).