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

In the Matter of)
)
 [REDACTED]) OHA Case No. 12-FH-119
)
 Claimant.) Division Case No. [REDACTED]

FAIR HEARING DECISION

I. INTRODUCTION

Mr. [REDACTED] (Claimant) applied for Interim Assistance benefits on December 19, 2011. (Ex. 2) Claimant sought Interim Assistance benefits claiming on his application that his ability to work and carry on daily activities was impaired by 1) Post Traumatic Stress Disorder (PTSD)¹ arising as a result of a work related injury on March 22, 2010, and by 2) physical impairments that limit his ability to “sit, stand, or walk for more than 4 continuous hours” including nerve damage to his right side, a fractured back, degenerative disk disease. (Ex. 3.7)

On March 22, 2012, the Department of Health and Social Services, Division of Public Assistance (Division) denied Claimant’s application and he appealed on March 23, 2012. (Exs. 4, 5)

This Office has jurisdiction pursuant to 7 AAC 49.010 *et. seq.*

Claimant has the burden of proving that he is eligible for the benefits for which he is applying.² Claimant must meet his burden of proof by a preponderance of the evidence.³

¹ PTSD is characterized as an anxiety disorder for which documentation of the anxiety reaction is essential. 20 C.F.R. Part 404, Subpart P, Appendix 1, 12. Mental Disorders, D, 11. It is considered disabling only if it satisfies all of the criteria described in the listing of impairments at 20 C.F.R. Part 404, Subpart P, Appendix 1, 12. Mental Disorders, 12.06 Anxiety Related Disorders. These criteria include medically documented findings of at least generalized persistent anxiety accompanied by 3 of 4 specific signs and resulting in marked difficulties or restrictions in functioning or repeated episodes of extended periods of decompensation, or resulting in inability to function independently outside the home. (*Id.*)

² See, *State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Alaska Adult Public Assistance Regulation 7 AAC 40.050(a) expressly provides “[a]ll applicants must “furnish adequate evidence to demonstrate ... eligibility for assistance.”

³ An applicant for benefits is a person who is seeking a change in the status quo and therefore has the burden of proof by a preponderance of the evidence. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska

II. FACTS

A. Procedural History

The Department of Health and Social Services, Division of Public Assistance (Division) denied an Interim Assistance application submitted by Claimant on December 19 2011. (Ex. 2) The Division determined Claimant was not eligible for Interim Assistance benefits because he was not disabled according to the Social Security Administration's (SSA) Supplemental Security Income (SSI) criteria. (Ex. 3) On March 23, 2012, the Division gave Claimant written notice it had denied his application.⁴ (Ex. 5) On March 23, 2012, Claimant appealed by requesting a Fair Hearing (Ex. 4)

A hearing took place on May 3, 2012. Claimant attended and was assisted by Ms. [REDACTED] Case Manager for Claimant at CHOICES, Inc. The Division was represented by Mr. [REDACTED] Public Assistance Analyst. Ms. [REDACTED] the Division's Medical Reviewer and Disability Adjudicator, participated telephonically and testified as the Division's witness.

At the hearing on May 3, 2012, Claimant first alleged he also was impaired because of a tear in his right shoulder rotator cuff. (Ex. A) Claimant supplied additional exhibits in support of his application on May 3, 2012 and May 9, 2012.⁵ Included was evidence of a diagnosis, by Dr. [REDACTED] M.D., of Claimant's permanent partial impairment arising from a series of work related injuries to Claimant's spine and upper extremities (Ex. L) and a report of a diagnosis by Dr. [REDACTED] M.D., of PTSD in 2010. The Division reviewed Claimant's supplementary documentation after the hearing and, on May 15, 2012, issued notice it had not changed its decision to deny Claimant's December 19, 2011 application.

The Division denied Claimant's application because it determined he was not likely to be found eligible for Supplemental Security Income (SSI) benefits and hence did not meet eligibility requirements for Interim Assistance.

1985) To prove a fact by a preponderance of the evidence, one must "induce a belief" ... "that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

⁴ The notice actually informed Claimant his application was being "held until a decision is made on your application for Supplemental Security Income (SSI) benefits." (Ex. 5) On April 23, 2012, the Division sent Claimant a revised denial letter with more detailed explanation of its denial. (Ex. 6) The April 23, 2012 denial letter met due process requirements providing adequate notice such that Claimant could fairly meet the reasons for which his application was denied.

⁵ Claimant initially supported his application with an AD 2 form completed by Claimant's treating doctor, Dr. [REDACTED] M.D., on January 18, 2012 (Ex. 3.5-3.6); Claimant's Disability and Vocational Report signed by Claimant on January 22, 2012. (Exs. 3.07-3.12); Claimant's resume (Exs. 3.13-3.14) and medical records from [REDACTED] Alaska Medical Center (Exs. 3.19-3.134). Subsequently, Claimant supplied Exhibits A through K, and M, and Exhibit L, consisting of about 150 pages of medical documentation concerning Claimant's permanent partial impairment.

B. Facts Relevant to the Disability Claim

Claimant was 51 years old at the time of his application for Interim Assistance. (Ex. 3.05) Claimant's past relevant work consists primarily of working as security officer (including as a bouncer), some bartending, and working for an automobile dealership. (Ex.3.09; Claimant's testimony) All of his prior work involved walking, bending, and sitting/standing. (Claimant's testimony)

Claimant has a history of work related injuries to his spine and upper extremities.⁶ As of November 20, 2003, Claimant was evaluated as having permanent partial impairment of a "19% whole person impairment" by Dr. ██████████ M.D. (Ex. L, November 20, 2003) Claimant worked subsequently notwithstanding this impairment.

On March 22, 2010, Claimant suffered another work related injury consisting of a bite wound to his upper eyelid and eyebrow and he fell on his right shoulder.⁷ (Ex. C4) X-rays of his right shoulder and clavicle found no fracture or soft tissue abnormalities. (Ex. C4)

⁶ The medical documentation he supplied shows that in an October 20, 1999 medical report, Dr. ██████████ M.D., noted Claimant reported pain in his upper extremity in relation to an injury while Claimant was working as an automobile salesperson. (Ex. L) Dr. ██████████ conducted electrodiagnostic evaluation of Claimant's symptoms⁶ and concluded from this testing that:

Currently there is no evidence of a significant median mononeuropathy, peripheral neuropathy, brachial plexopathy, radioculopathy, or other abnormality in the areas sampled, aside from the slight segmental slowing as described, which I am not sure can account for all of his symptomatology. (Ex. L, October 20, 1999)

Subsequently, on May 18, 2000, after seeing Claimant for a work injury related permanent partial evaluation pertaining to ongoing neck and arm pain after a fall approximately 4 years prior, Dr. ██████████ reported Claimant's "overall rating is 12% whole person impairment". (Ex. L, May 18, 2000)

On January 15, 2002, Dr. ██████████ again evaluated Claimant for a work related back injury. (Ex. L, January 15, 2002) Dr. ██████████ wrote Claimant's "overall rating is 7% whole person in relation to the lumbar spine difficulties related to an injury on March 22, 2001⁶, given his previous ratings. There is no evidence of previous spinal difficulty...." (Ex. L, January 15, 2002) This 7% overall rating incorporated Dr. ██████████ previous 12% whole person impairment rating. (*Id.*)

On November 20, 2003, Dr. ██████████ evaluated Claimant's injury to his back on November 3, 2002 while lifting a heavy car ramp. (Ex. L, November 20, 2003) Dr. ██████████ stated "I would be more comfortable with a repeat MRI given his complaints of changes...." because Claimant's report of pain involves dramatic changes from the "symptoms complexes" reported to Claimant's initial back injury of March 2001. (Ex. L, November 20, 2003) Dr. ██████████ stated "if there was indeed a new injury which I am of the notion there was, this would be an 11% additional whole person impairment for a total rating in relation to the lumbar spine of 19% whole person impairment at this time." (*Id.*)

On January 8, 2004, Dr. ██████████ determined Claimant was having "significant radicular symptoms" in relation to Claimant's right foot and toe flexion but this "is not related to a work injury as of November 3, 2002." (Ex. L, January 8, 2004)

⁷ On March 6, 2010, Claimant incurred a work related (bouncer) injury to his right shoulder which was documented as "contusion, possible Type III neck/glenoid fossa fracture right scapula." (Ex. C4) There is no medical evidence in the record concerning if this injury resulted in impairment to Claimant's shoulder.

On September 9, 2010, Claimant's cervical and shoulder pain was evaluated as part of a Workers' Compensation claim. (Ex. D) Based on that evaluation, Claimant was found capable of doing work demanding light capacity strength demands. (Ex. D, p. 1) On September 23, 2010 and October 15, 2010, Dr. [REDACTED] Claimant's evaluating physician for the workers' compensation case, declared him medically stable and able to perform work as a: "House Officer (hotel & restaurant)." (Exs. E and J) On September 23, 2010, Dr. [REDACTED] determined Claimant was able to work at another of his past occupations of "Salesperson, Automobiles." (Ex. I) There is no evidence Claimant's permanent partial impairment changed after September 23, 2010.

Claimant was diagnosed on May 20, 2012 with Post Traumatic Stress Disorder (PTSD) by Dr. [REDACTED] M.D., who linked it to Claimant's work related injury of March 22, 2010. (Ex. C4) There is no medical documentation in the record supporting Dr. [REDACTED] diagnosis of PTSD. On January 18, 2012, Dr. Aaron [REDACTED] M.D., diagnosed Claimant with PTSD on a Preliminary Examination for Interim Assistance form and stated that Claimant was expected to recover from PTSD within 12 months. (Ex. 3.5-3.6) Dr. [REDACTED] linked Claimant's PTSD to his March 22, 2010 injury. Dr. [REDACTED] Initial Evaluation Form, dated December 22, 2011, recommends treatment as: "[t]he patient should resume his medication. The patient should be encouraged to find work and housing as soon as possible."⁸ (Ex. L, December 22, 2011) There is no medical documentation supporting Dr. [REDACTED] diagnosis, and no tests, evaluations, or laboratory results supporting the diagnosis of PTSD in the record.

Claimant has a significant history of alcohol abuse. Claimant supplied substantial evidence of his treatment at [REDACTED] Medical Center between January 22, 2010 and January 2012 for alcohol abuse.⁹ (Exs. 3.19-3.134)

The January 22, 2010 notes of Claimant's [REDACTED] Medical Center emergency room treatment (Exs. 3.19-3.51) reports Claimant's abuse of alcohol for "quite some time," and memorializes a binge drinking problem he reported as starting approximately January 1, 2010, marked by drinking about "a fifth a day." (Ex. 3.19) Laboratory studies indicated Claimant also tested positive for polysubstance abuse, although he reported he did not use "illicit" drugs. (Exs. 3.29, 3.20, 3.38, 3.44) Claimant reported nausea, shortness of breath, difficulty breathing, and palpitations if he goes without alcohol for more than six hours. (Ex. 3.19) He was treated for alcohol withdrawal and left the hospital against medical advice early on January 24, 2010. (Ex. 3.23)

On June 17, 2010, Claimant was brought to [REDACTED] Medical Center emergency room as an intervention relating to Claimant's alcohol abuse. (Exs. 3.52-3.67) Dr. [REDACTED] Claimant's psychiatrist, reported Claimant was "somewhat difficult to treat" because Claimant was "not willing to take medications." (Ex. 3.52) Claimant was admitted to the psychiatric emergency department for a mental health evaluation but Claimant was discharged because there were no detoxification beds available.

⁸ Dr. [REDACTED] also stated Claimant was appropriate for "the services of Choices and Sotaria." (Ex. L, December 22, 2011).

⁹ Claimant's letter, dated April 25, 2012, includes statements he "went to the Psychiatric Ward at [REDACTED] Hospital for my PTSD many times. However, the medical reports pertaining to Claimant's treatment at [REDACTED] Hospital do not relate to treatment for PTSD. The records describe treatment for alcohol abuse and, on two occasions, polysubstance abuse. (Exs. 3.29; 3.106) Many of the medical reports supplied are incomplete and start with a header on the first page stating: "ED Notes (continued)". (See, e.g. Exs. 3.87, 3.97, 3.104, 3.112, 3.131).

(Exs. 3.62, 3.64) Claimant was diagnosed with “[m]ild-to-moderate alcohol withdrawal” (Ex. 3.62), “alcohol withdrawal” and “chronic intermittent alcoholism.” (Ex. 3.63)

In 2011, Claimant was seen at [REDACTED] Medical Center at least four times (May 16, June 4, November 3, and December 5) for treatment of his alcohol abuse.¹⁰ (Ex. 3.68-3.111) Claimant denied use of drugs on May 16, 2011 (Ex. 3.87), however on December 5, 2011, Claimant again tested positive for substance abuse, namely cannabinoids and benzodiazepine. (Ex. 3.106)

On January 12, 2012, Claimant was seen at [REDACTED] Medical Center again for symptoms of severe intoxication. (Ex. 3.114-3.130)

On January 23, 2012, Claimant went to [REDACTED] Medical Center requesting medication for an acute anxiety attack, which he stated arose because he witnessed an attempted suicide. (Ex. 3.131-3.134) Claimant denied a history of alcohol abuse until confronted by staff. (Ex. 3.132-3.133) There is no report that Claimant was under the influence of intoxicants at the time. Claimant was given medication and discharged to his group home. (Ex. 3.133)

Claimant wrote on April 25, 2012 that he feels better prepared to cope with the future, is able to provide assistance and support to others, “have learned to navigate the bus system and am currently interviewing for jobs that I am qualified for under the limitations of my physical and mental health.” (Ex. M) At the hearing, Claimant testified those jobs were as a bartender and food server at a restaurant.

III. DISCUSSION

Interim Assistance is a benefit provided to a “permanently and totally disabled” Alaskan who is a recipient of Adult Public Assistance while he or she is waiting for the federal Social Security

¹⁰ On May 16, 2011, Claimant went to the [REDACTED] Medical Center emergency room about 7:00 a.m. because he was hallucinating as a result of his alcohol abuse and concurrent failure to eat. (Ex. 3.68-3.86) Claimant was discharged at his request the same day at about 7:00 p.m. in a stable condition, awake, alert, with clear and fluent speech. (Ex. 3.68, 3.75)

On June 4, 2011, Claimant was seen at [REDACTED] Medical Center because he was shaking. (Ex. 3.87-3.96)¹⁰ The attending doctor determined Claimant had symptoms of alcoholic gastritis and anxiety. (Ex. 3.89) Claimant was not admitted and was discharge the same day.

On November 3, 2011, Claimant was seen at [REDACTED] Medical Center. (Ex. 3.97-3.103) He was complaining of feeling “somewhat anxious” and reporting upper abdominal pain with nausea and vomiting, and continued alcohol use that day. (Ex. 3.97) Claimant was determined to be having “likely alcoholic gastritis” mild alcohol withdrawal. (Ex. 3.99)

On December 5, 2011, Claimant was seen at [REDACTED] Medical Center for a psychiatric evaluation upon the referral by staff from the crisis treatment center who believed Claimant might have been untruthful to them regarding his alcohol use and for medical clearance to go to CRC. (Ex. 3.104-3.111) Claimant tested positive for cannabinoids and benzodiazepine. (Ex. 3.106) Claimant had stopped taking anxiety medication. (Ex. 3.111)

On January 12, 2012, Claimant again was seen at [REDACTED] Medical Center when intoxicated and for alleged suicidal ideation. (Ex. 3.114-3.130) Claimant denied suicidal ideation. (Ex. 3.115) Claimant’s affect was determined to be manipulative (pretending to be crying and wiping his eyes but his gown remained dry), he was marginally cooperative, sarcastic, and his judgment and insight were deemed impaired by alcohol. (Ex. 3.118)

Administration (SSA) to approve his/her application for Supplemental Security Income (SSI). 7 AAC 40.170(a) and (b); AS 47.25.255; 7 AAC 40.020; *see* 7 AAC 40.050(c)(d).

To be eligible for Interim Assistance, Claimant must meet a number of eligibility criteria. *See* 7 AAC 40.030-130; 7 AAC 40.170-180. Claimant cannot be eligible for Interim Assistance if the Division does not find him “likely to be found disabled by the” SSA according to an evaluation for SSI. 7 AAC 40.180(b)(1); 7 AAC 40.190. When making its determination whether Claimant is disabled, the Division applies the same evaluation process and similar requirements¹¹ as are applied by the federal Social Security Administration (SSA) when it determines eligibility of applicants for Supplemental Security Income (SSI). *Compare* 7 AAC 40.180 with 20 C.F.R. § 416.920(a)(4). The SSA applies a sequential evaluation process, set out at 20 C.F.R. § 416.920, to determine eligibility for SSI.

A. Inability to perform any work in the national economy as a result of severe medically determinable disabling condition. 7 AAC 40.180(c)(4); 20 C.F.R. § 416.920(4)(v).

The outcome of an SSA evaluation of eligibility for SSI is that the applicant is found disabled or not disabled based on whether the applicant can do any work. 20 C.F.R. § 416.920(a)(4)(v). Claimant cannot be eligible for SSI if he can do any form of work available in the national economy. 20 C.F.R. § 416.966(b). If Claimant’s impairment prevents him from doing any form of work, including even sedentary work, then he is deemed totally and permanently disabled. 20 C.F.R. § 416.920(a)(4)(v).

Claimant is a high-school graduate with 1 ½ to 2 years of college. (Ex. 3.11, 3.14) He is able to travel by using the public bus and is able to carry on his activities of daily life. (*Id.*) Claimant has mental capacity, skills and abilities to do work which is not manual work or that does not require physical labor; i.e., capacity to do at least sedentary work.

Claimant’s prior work history is as a restaurant server, bartender, and security officer. (Ex. 3.13-3.14) According to the [REDACTED] Medical Center report of May 16, 2011 Claimant had “a new job as a bartender.” Thus, Claimant was able to work about seven months before filing his December 19, 2011 application for Interim Assistance. (Ex. 3.86) Claimant stated on his resume, received by the Division on January 23, 2012,¹² that he worked bartending most recently in 2010 and 2011, but did not identify the month he last worked. (*See* Exs. 3.13-3.14) However, in his letter of April 24, 2012, Claimant described his current ability to seek work in occupations that he is “qualified for under the limitations of my physical and mental health.” (Ex. M) And, at the hearing on May 3, 2012, Claimant stated the jobs he had been looking for in April 2012 were jobs as a restaurant server and bartender. Claimant admits he is able to work at certain kinds of his prior work, i.e., a restaurant server and bartender. The duties of these jobs require more strength and mobility than jobs involving sedentary work. Therefore, Claimant can perform jobs involving, at minimum, light work effort as well as sedentary work.

Claimant has the physical ability to do many jobs available in the national economy. Claimant’s physical impairments of his spine and upper extremities have only partially impaired his

¹¹ The requirements are very similar but not identical.

¹² The Division received Claimant’s resume on January 23, 2012. .

ability to work. On July 28, 2010, Dr. [REDACTED] assessed Claimant's ability to work, in relation to Claimant's report of "cervical spine pain, bilateral shoulder pain," and "pain in the arms," and determined that Claimant "certainly can do some type of work and probably at least light duty."¹³ (Ex. L) On September 9 2010 and September 23, 2010, Dr. [REDACTED] determined Claimant was able to perform his prior work despite having permanent partial impairment for "shoulder issues," "lumbar spine issues," and "cervical spine difficulties."

Finally, throughout the [REDACTED] Medical Center reports of Claimant's visits are notations that his musculoskeletal health is good, he has good range of motion in all major joints, he "moves all extremities without difficulty," and no specific complaints are noted. (*See* eg. Exs. 3.88, 3.98, 3.105)

It is undisputed Claimant has some physical impairments. However, these impairments are not so medically severe as to disable Claimant from doing all work, and in fact, have been determined not to prevent him from doing his past work. Claimant did not prove by a preponderance of the evidence that he is so impaired as to be unable to perform any work. Claimant believes he is able to work. Claimant is not disabled according to SSI criteria because he can work and therefore is not eligible for Interim Assistance.

However, Claimant alleges he is eligible for Interim Assistance because he is disabled due to his PTSD. Therefore, this assertion is addressed. Three factors apply to Claimant's circumstances: 1) the SSI duration requirement; 2) the impact of Claimant's alcohol and drug abuse on his claim of PTSD; and 3) the impact of Claimant's refusal to follow medical advice on his claim of PTSD.

B. The Duration Requirement

The "duration requirement" has two parts: a time component and a medical documentation component. This eligibility criteria requires the 12 month duration of at least one severe medically determinable impairment that is a disabling condition. 7 AAC 40.180(c)(5); 20 C.F.R. § 416.920(a)(4)(ii) and (iii).

1. Duration of Twelve Months or More

Steps two and three of the SSA sequential evaluation process require an applicant to have been impaired by a disabling condition for a continuous period of 12 months, or to be expected to be impaired for that time, or have a condition leading to death. This period is called the "duration requirement. 20 C.F.R. § 416.909.¹⁴ The durational requirement asks: Does the applicant have a "severe medically determinable physical or mental impairment" that has lasted or is expected to last for at least

¹³ Claimant asserted in his application that his physical impairments prevent him from working. (Ex. 3.7) Dr. [REDACTED] repeatedly evaluated Claimant's physical impairments as a result of three workers' compensation claims arising between 1999 and 2010. *See* footnote 6. On September 9, 2010, Dr. [REDACTED] found Claimant capable of doing work demanding light capacity strength demands. (Ex. D, p. 1) On September 23, 2010 and October 15, 2010, Dr. [REDACTED] declared Claimant medically stable and able to perform work as a: "House Officer (hotel & restaurant). (Exs. E and J) On September 23, 2010, Dr. [REDACTED] evaluated Claimant as able to work at another of his past occupations of "Salesperson, Automobiles." (Ex. I).

¹⁴ The same durational requirement, found in the federal SSI evaluation process at 20 C.F.R. § 416.920(a)(4)(ii) and (iii), is an eligibility requirement for Interim Assistance evaluation. *See* 7 AAC 40.180(c)(5).

12 months? If the severe impairment does not satisfy the duration requirement, the applicant is not disabled. 20 C.F.R. § 416.920(a)(4)(ii).

Claimant's Right Shoulder Rotator Cuff Tear

On May 3, 2012, Claimant alleged he was impaired by a tear in his right shoulder rotator cuff. He asserted this through a Preliminary Examination for Interim Assistance form (AD 2) signed by a Physician's Assistant – Certified (PA-C) and an imaging report. (Exs. A; B) The AD 2 noted Claimant was expected to recover from this impairment within 9 - 12 months after corrective surgery and physical therapy. (Ex. A) There is no evidence this condition existed for 12 months before Claimant's application date of December 19, 2011 or the Fair Hearing date of May 3, 2012. Accordingly, this impairment does not meet the duration requirement. Claimant is not disabled by the impairment of his right shoulder rotator cuff tear.

PTSD Diagnoses

Claimant asserts his PTSD is a severe medically determinable impairment that meets the duration requirement. Dr. ██████████ M.D. diagnosed Claimant with "severe PTSD" on a January 18, 2012 Preliminary Examination for Interim Assistance form (AD 2) (Ex. 3.05-3.06) Dr. ██████████ practices psychiatry.¹⁵ (Ex. 3.06) Dr. ██████████ wrote Claimant was expected to recover from the diagnosed condition within 12 months. (Ex. 3.06) As of May 3, 2012, Claimant had been seeing Dr. ██████████ for about five months. (Claimant's testimony) Based on Dr. Wolf's assessment, Claimant does not meet the duration requirement, prospectively.

Claimant was also diagnosed by Dr. ██████████ M.D., in May 2010 with PTSD. Claimant meets the duration requirement for a diagnosis of PTSD arising in May 2010 as of the December 19, 2011, the date of his application for Interim Assistance. However, the absence of medical documentation supporting Dr. ██████████ diagnosis precludes this diagnosis from meeting the remainder of the duration requirement, that is the requirement that Claimant have a "severe medically determinable impairment" which is disabling.

2. Severe medically determinable impairment

A severe impairment is any impairment or combination of impairments which "significantly limits [a person's] physical or mental ability to do basic work activities." 20 C.F.R. § 416.920(c). If the impairment is not severe, the applicant is not disabled by that impairment. 20 C.F.R. § 416.920(a)(4)(ii).

To be "medically determinable," medical evidence is required to establish an applicant's impairment and an applicant's statements, alone, are insufficient. 20 C.F.R. § 416.908. An impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. § 416.908. A physical or

¹⁵ Claimant's "Initial Evaluation Form," dated December 22, 2011, for services from ██████████ Health Care, P.C., records Claimant's statements that anxiety makes concentrating difficult for him and that he denies delusional beliefs, hallucinations, suicidal/homicidal ideation, motor abnormalities or other cognitive deficits. (Ex. L, December 22, 2012)

mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by an applicant's statements of symptoms. (*Id.*)

Medical evidence consists of "signs, symptoms, and laboratory findings." 20 C.F.R. § 416.908; *see* 20 C.F.R. § 416.928. Signs are anatomical, physiological or psychological abnormalities which can be observed, apart from statements. Signs must be shown by medically acceptable clinical diagnostic techniques. 20 C.F.R. § 416.928(b). Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques, such as tests, electrophysiological studies, x-rays and psychological tests. 20 C.F.R. § 416.928(c).

PTSD Diagnosed by Dr. [REDACTED] M.D.

On March 22, 2010, Claimant was injured at work and obtained workers' compensation benefits as a consequence. As part of those benefits, Claimant was seen by Dr. [REDACTED] M.D. psychiatrist, on April 21, 2010. (Ex. 3.52; Ex. C p. 5) The evidence that Claimant was diagnosed with PTSD in 2010 is found in a "Reemployment Benefits Eligibility Evaluation Report" (Report) written by [REDACTED] CRC, M.Ed a Rehabilitation Specialist with [REDACTED] Vocational Services. (Ex. C) Included in the list of medical information summarized in the Report is mention that, on May 20, 2010, Dr. [REDACTED] made "pharmacologic progress notes" recording Claimant's statements that "Lorazipan helps ... Tearful, anxious, denies" suicidal ideation ... Diagnosis: "Post Traumatic Stress Disorder 309.81." (Ex. C5) The basis for Dr. [REDACTED] diagnosis of PTSD is not provided.¹⁶

Claimant supplied substantial medical records from [REDACTED] Medical Center. (Exs. 3.19 - 3.134) None of these records provide evidence of PTSD, although they do record Claimant's diagnosis of PTSD and his statements that he has PTSD. The medical records from [REDACTED] Medical Center pertain to treatment of Claimant's alcohol abuse and, on two occasions, mention polysubstance abuse. Claimant has not provided evidence of signs or laboratory findings supporting his PTSD.

However, on January 23, 2012, Claimant went to [REDACTED] Medical Center requesting medication for an acute anxiety attack, which he stated arose because he witnessed an attempted suicide. (Ex. 3.131-3.134) Claimant denied a history of alcohol abuse until confronted by staff. (Ex. 3.132-3.133) There is no report that Claimant was under the influence of intoxicants at the time. Claimant was given medication and discharged to his group home. (Ex. 3.133) This sole medical documentation of an anxiety attack does not support a finding of PTSD.

C. Effect of Claimant's alcohol and drug abuse in relation to his PTSD impairment.

Claimant cannot be deemed disabled if use of drugs and/or alcohol is a contributing factor material to the determination of disability. 20 C.F.R. § 416.935(a). The key factor is if the applicant would be found disabled if the individual stopped using drugs or alcohol. 20 C.F.R. § 416.935(b).

¹⁶ Dr. [REDACTED] saw Claimant at [REDACTED] Hospital, the hospital where Claimant received care for his work injury on March 22, 2010 and apparently for some time thereafter. Claimant did not provide records from [REDACTED] Hospital in support of his application.

Claimant asserts his PTSD/anxiety arose from the work related injury he suffered on March 22, 2010 and that he “self-medicated” his anxiety by abusing alcohol. (Ex. M; Claimant’s testimony) However, Claimant was admitted for detoxification from alcohol abuse at ██████████ Hospital Medical Center on January 22, 2010. (Exs. 3.19-3.51) Both Dr. ██████████ and Dr. ██████████ diagnosis of PTSD connect it to Claimant’s injury of March 22, 2010. Thus, Claimant’s abuse of alcohol pre-dates his diagnosis of PTSD based on his March 22, 2010 injury.

Claimant provided no evidence supporting a determination of a disabling PTSD impairment separate and apart from the effect of alcohol abuse. Claimant’s abuse of alcohol did not arise from his self-medication of PTSD.

Regulation 20 C.F.R. § 416.935(b) establishes the key consideration is if the applicant would be found disabled if the individual stopped using drugs or alcohol. 20 C.F.R. § 416.935(b). On May 16, 2011, the medical report documents that Claimant was seen in ██████████ emergency room one morning because he was hallucinating from alcohol abuse and that he was discharged about 12 hours later in a stable condition, alert and with clear and fluent speech after being treated for his alcohol issues. (Exs. 3.68, 3.75) This is evidence, that without alcohol, Claimant would be able to function sufficiently well to be deemed safe to discharge from the hospital. Claimant does not meet the eligibility requirement that his PTSD is a medically determinable severe impairment because it appears he would not be disabled by PTSD if he stopped using drugs or alcohol.

D. Effect of failure to follow medical advice on determination of impairment.

Claimant cannot be deemed disabled if he does not follow prescribed treatment. 20 C.F.R. § 416.930(b).

On June 17, 2010, Claimant was brought to ██████████ Medical Center emergency room as an intervention relating to Claimant’s alcohol abuse. (Exs. 3.52-3.67) Dr. ██████████ Claimant’s psychiatrist, reported Claimant was “somewhat difficult to treat” because Claimant was “not willing to take medications.” (Ex. 3.52) This evidence of Claimant’s resistance to treatment by the doctor who diagnosed him with PTSD is relevant to determination of disability based on PTSD. In the absence of substantial medical documentation of PTSD, separate from medical documentation of alcoholism and its effect on Claimant, this reference to Claimant’s refusal to follow medical advice is persuasive. Claimant cannot be deemed disabled by PTSD. 20 C.F.R. § 416.930(b).

On December 22, 2011, Dr. ██████████ noted on his Initial Evaluation Form that Claimant should “resume his medication.” (Ex. L) This indicates Claimant’s continuing non-compliance, or at least intermittent compliance, with medical advice.

Claimant cannot be found disabled by PTSD because he appears not to follow prescribed treatment and medical advice.

IV. CONCLUSION

Claimant did not prove by a preponderance of the evidence that he has had a severe medically determinable impairment that disables him from doing any work and which has lasted or is expected to last for at least 12 continuous months. 7 AAC 40.180(c)(5) and 20 C.F.R. § 416.920(a)(4)(2).

Claimant did not prove by a preponderance of the evidence that he is likely to be found disabled by the Social Security Administration. 7 AAC 40.180(b). Claimant did not prove he is eligible for Interim Assistance benefits. 7 AAC 40.030(a).

DATED June 29, 2012.



Claire Steffens
Hearing Authority

APPEAL RIGHTS

If Claimant is not satisfied with this decision, Claimant has the right to appeal by requesting a review by the Director. If 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:

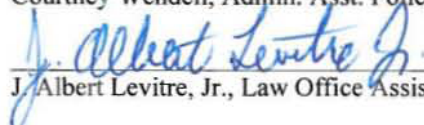
Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

Certificate of Service

I certify that on June 29, 2012, 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, encrypted e-mail:

Public Assistance Analyst
Public Assistance Analyst
Staff Development & Training
Kari Lindsey, Admin. Assist. Dir.
Erin Walker-Tolles, Policy & Program Development
Courtney Wendell, Admin. Asst. Policy


J. Albert Levitre, Jr., Law Office Assistant I