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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. 11-FH-121
	)	
Claimant.	)	DPA Case No. [redacted]
	)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. [redacted], (Claimant), applied for Interim Assistance on or about January 14, 2011. (Ex. 1; Ex. 4.0) On February 14, 2011, the Alaska Department of Health and Social Services, Division of Public Assistance (Division) notified Claimant her application was denied. (Ex. 4) On March 18, 2011, Claimant requested a hearing to contest the Division's denial of her application. (Ex. 5-5.1).

The Office of Hearings and Appeals (Office) has jurisdiction over this case pursuant to 7 AAC 49.010-020.

A Fair Hearing was held over a period of the three days of June 2, 2011, July 7, 2011, and August 4, 2011.[1] Claimant attended each day of the hearing telephonically, represented herself and testified on her behalf. Claimant was assisted by Ms. [redacted], Mat-Su Health Services Skills Development Specialist, (Specialist) who appeared telephonically on each day of the hearing and who testified on behalf of Claimant. Claimant also was assisted by Ms. [redacted], also with Mat-Su Health Services, Skills Development, who appeared telephonically at the June 2, 2011 hearing and testified on behalf of Claimant. Mr. [redacted], the Division's Public Assistance Analyst, attended each day of the hearing in person, represented the Division, and testified on its behalf as the Division's Hearing Representative. Mr. [redacted], M.P.H., the Division's Interim Assistance Medical Reviewer, (Medical Reviewer) participated telephonically on each day and testified on behalf of the Division.

[1] The initial hearing was scheduled for April 28, 2011 and re-scheduled at Claimant's request. The hearing was re-scheduled to June 2, 2011.

All exhibits offered were admitted by stipulation of the parties.[2] On August 4, 2011, the evidentiary record closed.

ISSUE

On February 14, 2011, was the Division correct when it denied Claimant's January 13, 2011 application for Interim Assistance benefits because Claimant did not meet the Adult Public Assistance program's Interim Assistance disability requirements?

SUMMARY OF DECISION

Claimant proved by a preponderance of the evidence that she met the Interim Assistance eligibility requirements of 7 AAC 40.180. Claimant's medical evidence provided in support of her alleged impairments of Depressive Disorder and Post Traumatic Stress Disorder (PTSD) did not show Claimant suffered one or more medically severe impairments for a continuous period of 12 months or that would endure for 12 months. Claimant's alleged impairment of PTSD was not supported by any medical evidence[3] and therefore there was no basis for finding Claimant permanently and totally disabled due to PTSD. Claimant did not prove by a preponderance of the evidence she has a medically severe impairment such that the Social Security Administration is likely to determine she is permanently and totally disabled.

PERTINENT PROCEDURAL HISTORY

On or about December 15, 2010, Claimant first applied for Adult Public Assistance (APA) Interim Assistance benefits and began supplying documents in support of her application.[4] (Ex. 2.39; Medical Reviewer's testimony) On January 13, 2011, the Division denied her December 15, 2010 application giving a narrative explanation of its basis for denial. (Ex. 2.28-2.29) Claimant did not request a hearing about this denial.

Instead, Claimant apparently re-filed her application on January 14, 2011, which the Division denied on February 11, 2011, for the same reasons it stated in its January 13, 2011 denial, and noting Claimant previously was denied on January 13, 2011. (Ex. 2.17-2.18) The Division notified Claimant on February 14, 2011 of its denial. (Ex. 4) Based on the February 14, 2011 denial, Claimant requested a fair hearing on March 18, 2011. (Ex. 5-5.1)

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[2] Claimant supplied additional documents over the period of the hearing dates. The hearing was continued, in part, to give the parties opportunity to review and respond to the additional documents. On June 7, 2011, the Office received Claimant's additional documents which the Division supplied as Exhibits 22.0-22.25. On June 30, 2011, the Office received Claimant's additional documents which the Division supplied as Exhibits 23.0-23.2. On July 25, 2011 and on July 27, 2011, Claimant supplied duplicate documents, one set marked as Exhibits A.0-A.6. All of these documents were admitted into the evidentiary record by the stipulation of the parties and have been considered in this decision.

[3] Technically, Claimant's doctor's diagnosis of PTSD is considered evidence. However, it is not evidence which was supported by any other evidence or medical testing or clinical analysis. Claimant's doctor does not describe the basis on which she diagnosed PTSD; it appears to be based solely on Claimant's report to the examining doctor. An applicant's statement of symptoms is insufficient to constitute medical evidence of disability. 20 C.F.R. § 416.908.

[4] On December 13, 2010, the Division received Claimant's first Disability and Vocational Report. (Ex. 2.34-2.39) Claimant applied for Supplemental Security Income (SSI) on October 12, 2010, claiming the date of her disability was September 14, 2010. (Ex. 2.05) On December 14, 2010, the Social Security Administration (SSA) denied her SSI application on grounds that her alleged disability was not a severe impairment at that time and did not meet the durational requirement. (Ex. 3.0; 3.2)

Claimant continued to supply additional documentation to support her (now denied) application. (*See, for example,* Ex. 2.02; Exs. 2.07-2.011; Medical Reviewer's testimony) On April 4, 2011, the Division's Medical Reviewer again denied Claimant's application[5] because the additional documentation provided no basis for changing the Division's prior denial of February 14, 2011. (Ex. 2.01; Medical Reviewer's testimony) Claimant continued to supply documentation to support her application through and including July 5, 2011. (*See* Ex. 19; Exs. 22.0-22.25; Ex. 23.2)

At the hearing, the parties stipulated to waive all issues concerning notice so that Claimant could obtain a review of the Division's denials of her application(s) for Interim Assistance benefits on the merits of whether Claimant was permanently and totally disabled by depression and PTSD. The parties further stipulated that the Division's denial of February 14, 2011, on which basis Claimant requested a hearing, would incorporate the Division's denial reasons of January 13, 2011. Therefore, this decision addresses all of Claimant's applications as one application and all of the Division's denials as one denial, and is based the entire evidentiary record as presented by the parties through the close of the evidentiary record on August 4, 2011.

FINDINGS OF FACT

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

1. On January 14, 2011, Claimant applied for Adult Public Assistance (APA) and Medicaid. (Ex. 1; Ex. 4) At the June 2, 2011 hearing, Claimant identified the impairments for which she was seeking Interim Assistance benefits as Post Traumatic Stress Disorder (PTSD) and depressive disorder. (Claimant's testimony) The Division evaluated her application based on the PTSD and depressive disorder diagnoses shown on Claimant's Preliminary Examination for Interim Assistance reports (AD 2 forms) supplied by two doctors. (Ex. 2.28-2.29)

2. On February 11, 2011, the Division's Medical Reviewer determined Claimant should be denied Interim Assistance because she "does not meet IA disability criteria." (Ex. 2.17) The Reviewer wrote Claimant did not meet the IA disability criteria because of "lack of information, previously denied 01/13/11. No new medical evidence received. No valid releases of information received." (Ex. 2.17-2.18) The January 13, 2011 denial described that Claimant's relevant medical evidence consisted of a medical report of an emergency room visit with a complaint of "suicidal ideation" and a medical report of an evaluation at Alaska Psychiatric Institute which discharged her after an overnight stay. (Ex. 2.28-2.29) The Reviewer also wrote that Claimant did not meet the SSA disability requirements for "affect and anxiety" disorders because there was "no indication of repeated episodes of decompensation each of extended duration, no indication of marked restriction of activities of daily living, marked restriction in social functioning, marked impairment to concentration, persistence, or pace." (Ex. 2.28-2.29)

3. On February 14, 2011, the Division notified Claimant that her January 14, 2011 application for Adult Public Assistance (APA) and Medicaid, in the form of Interim Assistance benefits, had been denied. (Ex. 4) The notice stated the reason for the denial was "[y]ou do not meet the disability requirements for APA and Medicaid. This action is based on APA Manual Section 424 and 425."

[5] The Medical Reviewer deemed Claimant's actions to be a request for "re-consideration." (Medical Reviewer's testimony)

(Ex. 4) The notice further stated "The Medical Reviewer has denied your Interim Assistance application based on lack of information, previously denied on 1/13/11, no new Medicaid evidence received, no valid releases of information were received…." (Ex. 4)

4. On January 13, 2011, the Division's Medical Reviewer determined Claimant should be denied Interim Assistance because she "does not meet IA disability criteria." (Ex. 2.28) The Medical Reviewer's reasoning, provided in his determination of denial and his testimony, was as follows:

a. Claimant's Preliminary Examination for Interim Assistance form identified PTSD and depressive disorder as the basis for her alleged impairment and no physical bases for alleging she is disabled.

b. Claimant was evaluated on the records of Mat-Su Regional Hospital. The Mat-Su Regional Hospital records document only one recent emergency room visit when Claimant was having "suicidal ideation." Claimant was released from the hospital within three hours of arrival, after she overcame the ideations and was referred to counseling.

c. Claimant was evaluated on the records of Alaska Psychiatric Institute (API). Claimant's evidence is one admission to API because Claimant's daughter called the police with concerns that Claimant was having "suicidal ideation" and the police took Claimant to the hospital in protective custody. The Medical Reviewer notes the API report states "she did not threaten suicide, she was not feeling suicidal" but it was a mistake on the part of her daughter, notes the API report references three prior psychiatric hospitalizations in Claimant's lifetime, the "last 10-12 years ago" and that Claimant's mental status was "alert and oriented," "ability to give history both for current and remote was excellent," cognitive function and fund of knowledge were above average," "the patient is articulate, well-spoken, well-versed," "she is capable of independent living," "she has hobbies and interests, social skills, ability for insight, (has) work skills and above average intelligence."

d. Claimant's medical evidence did not meet the "affect and anxiety criteria;" she has "no indication of repeated episodes of decompensation, each of extended duration;" she has no "marked restriction of activities of daily living;" she has no "marked restriction in social functioning;" and she has no "marked impairment to concentration, persistence, or pace.

(Exs. 2.28-2.29; Medical Reviewers testimony)

e. Claimant was determined not disabled because her medical evidence did not show she had a severe impairment and did not meet the durational requirement. Applying SSI regulation 20 C.F.R. § 416.921, as part of determining if it was likely that the SSA would find Claimant disabled, it was noted that the SSA had denied Claimant's application for SSI on the basis that Claimant did not have a severe medical impairment and that her alleged impairments had not lasted at least 12 months. The Medical Reviewer concurred in the finding of the SSA.

f. Claimant's medical evidence disclosed that she had no impairment of physical functioning, she had capacity for seeing, hearing and speaking, she has no difficulty understanding, carrying out simple instructions, dealing with changes in routine.

(Medical Reviewer's testimony)

5. Claimant supplied the Preliminary Examination for Interim Assistance (AD 2) forms completed by the following:

a. Dr. [redacted], M.D., family practitioner, diagnosing Claimant with "PTSD, depressive disorder" dated December 13, 2010. (Ex. 2.32-2.33) Dr. [redacted] wrote the patient "is being seen for counseling as well as receiving medication for her illness." (Ex. 2.33) Dr. [redacted] did not indicate any expected length of time required for recovery or remission. (Ex. 2.33)

b. Dr. [redacted], M.D., psychiatry, diagnosed Claimant with "depression, MDD 296.33" and wrote on February 7, 2011 that Claimant gets "meds, counseling, PVR." (Ex. 2.21) Dr [redacted] diagnosed Claimant as a client of Mat-Su Health Services, Inc. (Skills Development Specialist's testimony) Dr. [redacted] wrote the expected length of time required for recovery or remission was 12 months. (Ex. 2.21)

6. Claimant visited the Mat-Su Regional Medical Center emergency room on September 4, 2010. (Exs. 2.49-2.50). The two page report shows admission at 6:30 p.m. and discharge at 8:10 p.m. on the same day. The laboratory tests which were done showed normal results. (Exs. 2.51-2.56) The emergency room report of the visit states:

a. Claimant reported feeling increasingly depressed with the change of seasons.

b. Claimant reported she and her husband are separating, she feels isolated, she has a lot of financial stress, she tried to cut her wrist and is worried about suicidal ideation.

c. After spending time in the emergency room, Claimant was calmer, stated that she can get in touch with friends for social support, that she was "going to kick her husband out and get her life back," and that after about three hours she "felt like she was doing much better" and no longer felt suicidal.

(Ex. 2.49-2.50)

7. Claimant was admitted September 14, 2010 through September 15, 2010 (an overnight stay) for evaluation by the Alaska Psychiatric Institute (API) because Claimant's daughter requested police intervention out of concern her mother might commit suicide. (Ex. 2.63; Exs. 2.63-2.72) Claimant supplied the report of that visit and the results of laboratory tests pertaining to the services given during that evaluation, as medical evidence. (Exs. 2.59-2.62) The API report notes that Claimant thought she "may have depression or bipolar" or "posttraumatic stress disorder" due to "a history of severe abuse" in her first marriage. Ex. 2.64) The API describes Claimant's mental evaluation as:

> The patient is neatly groomed…[h]er behavior was well-controlled. She was interactive and cooperative with us. Sensorium and concentration: The patient is alert and oriented 4x. Her memory was not tested, but her ability to give history both for current and remote was excellent. Cognitive functions and fund of knowledge were above average. The patient is articulate, well-spoken, well-versed in healthy eating, and she is learning to be a … minister, which she is very proud of. Speech and thought production: The patient was slightly pressured. She was anxious, which she was able to verbalize to us with regard to going home and getting going on the multiple things and multiple distractions that she has. … Thought production is linear, logical, goal directed, well

articulated and well formulated. There is no evidence of thought disorder. She denied hallucinations and illusions. Mood state: The patient is clearly very "stressed out." Her facial expression reflected her sadness when talking about the breakup of her marriage. She did not break down in tears. She reported she has an "okay, that happened. I need to pull myself together and continue with the rest of my life" attitude. Judgment was good, and insight was good. Suicidal and homicidal ideation was denied. Estimate intellectual level was above average. (Ex. 2.65-2.66)

Assets: The patient has a general fund of knowledge, supportive family and community, she is capable of independent living, has strong spiritual and cultural practices, has a sense of humor that was quite apparent, excellent communication skills, she has hobbies and interests, social skills, ability for insight and has housing. She has not been working for the last 14 years, but does have work skills and above-average intelligence. In addition, she is motivated for growth and had formulated a follow-up plan prior to admission.
(Ex. 2.66)

Claimant's condition at discharge the day following admission was that she was "angry" but "coping relatively well under extreme stress." (Ex. 2.68) Claimant was prescribed Wellbutrin and follow-up counseling with Mat-Su Behavioral Health. (Ex. 2.68)

8. Claimant provided a copy of a report dated January 6, 2011of an "In-House Referral Form" (Referral Form) from Mat-Su Health Services, Inc. showing Claimant diagnosed as "depressive disorder D/O NOS PTSD Alcohol Abuse." (Ex. A-2) There is no information consisting of medical or clinical tests, laboratory findings, or findings supporting the diagnosis of depressive disorder, post traumatic stress disorder, or alcohol dependence shown on the In-House Referral Form.[6] (Ex. A-2) The Referral Form shows Claimant is to receive rehabilitation services in the form of "Individual Skills Development." (Ex. A-2)

The report of Mat-Su Health Services, Inc. also shows Claimant was evaluated for treatment and that her treatment plan was specifically for "Individual Skills Development." (Ex. A-2) The evaluation specifically sought to rule out bipolar disorder. (Ex. A-4) The treatment plan found appropriate for Claimant was not treatment for depressive disorder, bipolar disorder, or post traumatic stress disorder. (Ex. A-4-6)

The Treatment Plan consists of three pages, dated September 20, 2010, signed by Claimant and a person credentialed as "LCSW." (Exs. A4-A6) The amendment to the Treatment Plan dated November 8, 2010 is signed by a person credentialed as a Master of Science. (Ex. A-3) Specialist's testimony; Medical Reviewer's testimony) This Treatment Plan lists some conditions but does not identify whether they are diagnoses or concerns. It lists, for example, "depressive disorder nos rule out bipolar disorder nos" and "post traumatic stress disorder" and "alcohol dependence". (Ex. A-4) There is no reported testing or diagnosis in this treatment plan. (Ex. A-3-6). Four problem areas are identified, for which Claimant is to receive Mat-Su Health Services: 1) managing her moods; 2) responding appropriately to her marital separation; 3) obtaining dental services; 4) resolving her short term memory problems. (Ex. A4-6). The November 2010 amendment identifies the services Claimant is to

[6] There is no indication whether this is a diagnosis or a referral to rule out diagnosis for these conditions, or who is responsible for the listing.

receive as "work with an ISD worker so she can get basic needs met out in the community. She will learn skills to decrease depression and anxiety…." (Ex. A-3)

9. Claimant's Skills Development Specialist (Specialist's testimony) testified about the Treatment Plan portion of the Mat-Su Health Services, Inc. report to the extent that she is treating Claimant individually. The Specialist is working with Claimant to develop skills so she can decrease depression and anxiety and get her basic needs met in the community. (Specialist's testimony) The Skills Development Specialist assisted Claimant by accompanying her to the dentist to provide support for Claimant because Claimant had high anxiety about her severe dental needs and about going to the dentist at that time. (Specialist's testimony) The Specialist also accompanied Claimant to other appointments in the community to help Claimant get her basic needs met. (Specialist's testimony)

10. In support of her applications, Claimant completed a "Disability and Vocational Report" on January 14, 2011, which the Division received on January 18, 2011 (Ex. 2.22-2.26) and March 21, 2011.[7] (Ex. 2.07-2.11) This Report discloses that Claimant reports she suffers from depression and associated symptoms of "sadness," "lack of concentration," forgetfulness, and periodic suicidal ideation. (Ex. 2.7) Claimant worked between June 1988 and June 1989 as a "costume shop manager and seamstress." (Ex. 2.9) Claimant has "spent most of the past 30 years as a wife and mother not working outside home." (Ex. 2.11) Claimant has "days" when she "functions fairly well" and other days when she can "barely get out of bed even with medications." (Ex. 2.11)

11. Claimant supplied medical records from a military hospital clinic spanning May 1984 to July 1984, (Exs. 22.3-22.14), one page pertaining to November 1984 (Ex. 22.1), one page for December 1984 (Ex. 22.25), and one page pertaining to February 1, 1985. (Ex. 22.2) All of these records are at least 26 years old. On May 29, 1984, Claimant was diagnosed with "adjustment Disorder with Anxious Mood" on Axis I and Axis II: "none." (Ex. 22.12) On June 1, 1984, Claimant was prescribed Ativan. (Ex. 22.13) There is one reference to depression in these documents and it is of "situational depression" (Ex. 22.1). Other references relate to anxiety, such as 'self-reported stress overload" (Ex. 22.3); anxiety over being arrested for a "bad check" (Ex. 22.5). Claimant is reported as being prescribed Ativan (Exs. 22.5; 22.10). Claimant is reported as "responding to treatment very well, is articulating solutions to current situational problem(s)." (Ex. 22.6; *See also* Exs. 22.7-22.8, 22.11)

12. Claimant supplied a letter from her first husband, [with whom Claimant alleged she had a "seriously abusive relationship" for 14 years, 30 years prior to the present, (Ex. 2.65)] which informs the reader that Claimant was hospitalized for "24, or 48" hours in late 1970 to mid- 1971. (Ex. 23.2)

13. Claimant's sole medical evidence of her alleged PTSD impairment is that Dr. [redacted] listed it as a diagnosis on her December 13, 2010 AD 2 report. (*See* footnote 3; Ex. 2.33) Claimant self-reported to API that she thought she had PTSD due to a "history of severe abuse" during her first marriage, which lasted 14 years." (Ex. 2.64) This information appears contradicted by the fact that Claimant's obtained a letter, dated June 5, 2011, from her first husband in support of her search for medical evidence documenting her reported prior psychiatric hospitalization. (Ex. 23.2)

14. Claimant's anxiety is less from the situation of her husband being gone almost a year and more related to her lack of income and gradually deteriorating living condition. (Claimant's testimony)

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[7] This same, or nearly identical, document appears to have been submitted by Claimant to the Division on December 23, 2010 as well. (Ex. 2.34-2.39)

Claimant's alcohol dependence is not a current issue; due to the medications she presently is taking she has "not touched alcohol in 10 months." (Claimant's testimony)

15. Claimant was credible and assertive in the presentation of her testimony. She was articulate, organized, clear, attentive to details and specific about time, place, and event. Claimant sought and obtained assistance in presenting her case, but primarily presented it well by herself. Claimant described perceived errors in the details of the API records. One example, at Exhibit page 2.63, concerned the report of the events which resulted in her Mat-Su Regional Hospital emergency room visit of September 4, 2010 (the night when she and her husband separated). Claimant noted it was incorrect that her husband took away the knife and called the police and correct that the police took away the knife and told her that she could either be arrested or "commit myself, and I chose the latter." (Claimant's testimony) Claimant was able to distinguish other alleged errors in the API report which she contradicted only with her testimony. Claimant is not sure she had a "thorough psychiatric examination" because "talking to three psychiatrists in a room for half an hour is a thorough psychiatric examination." (Claimant's testimony)

PRINCIPLES OF LAW

I. Burden of Proof and Standard of Proof.

Applicants for Interim Assistance are required to "furnish adequate evidence to demonstrate [his] eligibility for assistance." 7 AAC 40.050. An individual who applies for public assistance benefits has the burden of proving he is eligible for them. *See, State of Alaska Alcoholic Beverage Control Board v. Decker,* 700 P.2d 483, 485 (Alaska 1985).

When an application is denied, the applicant continues to have the burden of proving he is eligible for the benefits he seeks. "Ordinarily the party seeking a change in the status quo has the burden of proof." *See, State of Alaska Alcohol Beverage Control Board v. Decker,* 700 P.2d 483, 485 (Alaska 1985)(n. 5, citing *2 K. Davis, Administrative Law Treatise*, § 14.14(1958).

The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1183 (Alaska 1986) *See, 2 R. Pierce, Administrative Law Treatise,* §10.7 at 973 (5th ed. 2010) (the preponderance of the evidence standard of proof applies to the vast majority of agency actions). The applicant must meet his burden of proving eligibility by a preponderance of the evidence.

"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: Alaska Laws

The State of Alaska, through the Division of Public Assistance (Division), Adult Public Assistance Program[8], may pay a monthly cash benefit to an eligible applicant while the applicant awaits the Social

[8] The Alaska statute authorizing Adult Public Assistance states, in relevant part: "[f]inancial assistance shall be given under AS 47.25.430-47.25.615 so far as practicable under appropriations made by law, to every aged, blind, or disabled needy resident who has not made a voluntary assignment or transfer of property to qualify for assistance." AS 47.25.430(a).

Security Administration's (SSA) final decision whether the applicant is eligible to receive Supplemental Security Income (SSI). AS 47.25.455; 7 AAC 40.170(b). Alaska's monthly payment is called Interim Assistance. AS 47.25.455. Disability payments are made to the "permanently and totally disabled." 7 AAC 40.170(a),(e).

An applicant for Adult Public Assistance benefits in the form of Interim Assistance is required to apply for Supplemental Security Income (SSI) benefits from the Social Security Administration.[9] 7 AAC 40.060. In addition, to obtain Interim Assistance benefits, an applicant must be determined by the Division to meet the requirements for Interim Assistance as provided by the Adult Public Assistance program. AS 47.25.455(a).

An individual may apply for Interim Assistance by alleging he or she is permanently and totally disabled. 7 AAC 40.170. The applicant must be determined to be permanently and totally disabled by the Division and to be likely to be found disabled by the Social Security Administration in order to be eligible for benefits. 7 AAC 40.170; 7 AAC 40.180.

A. Disability Defined.

For purposes of receiving Interim Assistance, the Alaska Legislature has defined the word "disabled" to mean "being unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months."[10] AS 47.25.615(5).

B. Disability Determination: Alaska Regulation 7 AAC 40.180(b)(1)(B)(2).

Regulation 7 AAC 40.180(b)(1)(B)(2) requires the Division to determine if an applicant meets the Interim Assistance disability requirements by considering whether the SSA would "likely" find the applicant's alleged impairment meets the SSA's "disability criteria for the listings of impairments." In doing so, the Division must consider the factors identified in 7 AAC 40.180(c)(1)-(5). An important requirement is that the alleged impairment on which basis an applicant seeks a disability determination "has lasted or is expected to last for a continuous period of not less than 12 months." 7 AAC 40.180(c)(5).

C. Disability Determination: Alaska Regulation 7 AAC 40.180(b)(1)(B)(3).

Regulation 7 AAC 40.180(b)(3) and/or regulation 7 AAC 40.050 do not require the Division to consider non-medically related information when determining if an applicant is disabled *unless* the Division has sought and obtained information concerning an applicant's non-medical circumstances. However, if the Division obtains non-medical information, (pursuant to 7 AAC 40.050, for example),

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[9] While there are some exceptions to this rule, they do not apply in this case. *See e.g.* 7 AAC 40.170(c).

[10] The Alaska definition of "disability" is nearly identical to that of the Social Security Administration, Supplemental Security Income (SSI) definition. The definition of "disability" for SSI purposes is: "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 10 C.F.R. §416.905(a).

then regulation 7 AAC 40.180 requires the Division to consider the information supplied by the applicant.

III. Eligibility Criteria for a Determination of Permanent and Total Disability: 7 AAC 40.180.[11]

Regulation 7 AAC 40.180 encompasses the Division's regulations for its "initial determination of disability."

A. Regulation 7 AAC 40.180(a).

Claimant must be examined by a physician or psychiatrist, who is an "an appropriate medical professional" for the Claimant's circumstances. 7 AAC 40.180(a); 7 AAC 40.050(c) The examining doctor "shall furnish a written report of the examination on a form approved by the division." 7 AAC 40.050(c); 7 AAC 40.180(a). The written report of the examination is called the Preliminary Examination for Interim Assistance (form AD 2).[12] This form provides some of the "medical evidence" considered by the Division in making its decision whether the Claimant is permanently and totally disabled. 7 AAC 40.180(b)(2); 7 AAC 40.170. This regulation focuses the base of the Division's disability determination on the medical evidence of an applicant's disability.

B. Regulation 7 AAC 40.180(b).

Regulation 7 AAC 40.180(b) expressly requires the Division to make a determination of whether the applicant is disabled. Regulation 7 AAC 40.180(b)(1)-(4) sets out the information on which the Division must base the disability determination.

1. Regulation 7 AAC 40.180(b)(1)

Regulation 7 AAC 40.180(b)(1) states the disability determination must be based on "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;[13] 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."[14] (hereinafter " Appendix 1")

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[11] Blindness is addressed separately by regulation 7 AAC 40.160 and is not at issue in this case. Therefore, this decision does not include matters pertaining to blindness.

[12] The Department of Health and Social Services uses a form titled "Preliminary Examination for Interim Assistance," commonly called an "AD-2." *See* http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm.

[13] This case does not concern allegations that Claimant is disabled by presumption because of any impairment listed in 20 C.F.R. § 416.934. Therefore, this regulation will not be discussed further.

[14] Federal SSI regulation 20 C.F.R. § 416.934 is found in Part 416 – "Supplemental Security Income for the Aged, Blind, and Disabled." Regulation § 416.920 provides for the "[e]valuation of disability of adults, in general" and establishes a five–step sequential evaluation process for determining if an applicant meets the disability criteria. The SSI regulation 20

Alaska regulation 7 AAC 40.180(b)(1)(B) requires the Division to determine whether the applicant's impairment meets the disability criteria for the listings of impairments found in Appendix 1. Alaska Regulation 7 AAC 40.180(b)(1)(B) expressly incorporates the disability criteria for each listed impairment in Appendix 1. However, the comparison of an applicant's alleged impairment(s) to the disability criteria of the impairments in Appendix 1 is only one of the bases on which the Division is to make its disability determination. *See* 7 AAC 40.180(a),(b)(2-4). In addition, the Division is required to consider five other specific factors, set out in 7 AAC 40.180(c), when it considers the disability criteria of Appendix 1 in light of the applicant's alleged impairment(s). The requirements of 7 AAC 40.180(c) are addressed below.

The Division is to determine if the applicant is likely to be found disabled by the Social Security Administration (SSA), in part by reviewing the applicant's medical information in context of the pertinent body system(s) listings. Appendix 1 organizes the disability criteria for types of impairments in a "listings of impairments" according to categories of "body system listings." 20 C.F.R. Part 404, Subpart P, Appendix 1. For example, "Mental Disorders" includes a lengthy "Introduction" and other discussion concerning the evaluation of disability on the basis of mental disorders , discusses the need for medical evidence of the required duration consisting of symptoms, signs, and laboratory findings, assessment of severity including impact on the activities of daily living and social functioning, assessment of the impact on concentration, persistence or pace in relation to appropriate completion of tasks commonly found in a work setting, and episodes of decompensation.

The preliminary text also discusses the documentation needed, sources of evidence, need for longitudinal evidence, work attempts, mental status examination and psychological testing, intelligence, personality and screening tests, neurological assessments, traumatic brain injury, anxiety disorders, eating disorders, chronic mental impairments and references a "technique for reviewing evidence in mental disorders claims to determine the level of impairment severity." 20 C.F.R. Part 404, subpart P, appendix 1, 12.00 Mental Disorders, I.[15]

Regulation 20 C.F.R. Part 404, subpart P, appendix 1, 12.00 Mental Disorders, 12.04 Affective Disorders, applies to the depression issue in this case, and establishes a set of requirements that an applicant must meet in order to be considered disabled. Likewise, 20 C.F.R. Part 404, subpart P, appendix 1, 12.00 Mental Disorders, 12.06 Anxiety Related Disorders, applies to anxiety related disorders such as PTSD. *See* Analysis section herein below.

Alaska regulation 7 AAC 40.180(b)(1)(B) expressly adopts the body system listing of impairments by reference. The Division is required to determine if an applicant is disabled, and base that determination on several factors, including whether the SSA would likely find the applicant disabled because the medical evidence he provides proves he experiences the disabling criteria in the required severity and number described for each listed impairment

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C.F.R. § 416.911(a)(1) expressly incorporates the "Listing of Impairments in appendix 1 of subpart P of part 404…" in its definition of a disabling impairment if the applicant is an adult seeking SSI.

[15] The Mental Disorders listing continues by identifying nine (9) categories of impairments identified by sub-number (e.g., 12.01; 12.02 etc) including, for example, "organic mental disorders," "affective disorders," "mental retardation disorders," "anxiety related disorders," "personality disorders," "substance addiction disorders," etc. Each category of disorder is described and has established on what basis the required level of severity for the disorder has been met to be considered a disability.

2. Regulation 7 AAC 40.180(b)(2)

(2) medical evidence provided by the applicant or obtained by the department.

3. Regulation 7 AAC 40.180(b)(3)

(3) other evidence provided by the applicant under 7 AAC 40.050, if applicable.[16]

Regulation 7 AAC 40.180(b)(3) requires the Division to "consider" the "other evidence" obtained under "7 AAC 40.050, if applicable…." 7 AAC 40.180(b)(3). In addition to the report of medical examination, the Division of Public Assistance (Division)

> will, in its discretion, require each applicant for aid to the permanently and totally disabled to submit evidence concerning his education and training, work experience, activities before and after onset of the claimed disability, efforts to engage in gainful employment, and other related matters.

7 AAC 40.050(d). Regulation 7 AAC 40.050 authorizes the Division to seek information concerning the applicant's circumstances which is not medical information, according to the Division's sole discretion. The applicant has the responsibility to provide the information if the Division requests information. Regulation 7 AAC 40.050 is incorporated by reference in regulation 7 AAC 40.180(b)(3). E

Therefore, regulation 7 AAC 40.180(b)(3) requires the Division to review all the evidence supplied by a Claimant in response the Division's request, for example, by completing a "Disability and Vocational Report" requested by the Division under authority of 7 AAC 40.050(d). Evidence obtained pursuant to the Division's request authorized by 7 AAC 40.050(d), *must be considered* by the Division in making its determination if a Claimant meets the "disability criteria for the listings of impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1. 7 AAC 40.180(c)(1). However, in contrast to the requirements of 7 AAC 40.180(b)(1)-(4), the Division *does not need to determine* if the Claimant is disabled for the reasons identified in the additional (non-medical) evidence. 7 AAC 40.180(c).

4. Regulation 7 AAC 40.180(b)(4)

(4) a review of the written results of the psychiatrist's or other physician's examination under (a) of this section.

This requirement requires that the medical report obtained under authority of 7 AAC 40.180(a) is considered by the Division when determining if an applicant is disabled.

C. Regulation 7 AAC 40.180(c).

Alaska regulation 7 AAC 40.180(c) requires the Division, when "determining whether an applicant's disability meets the criteria set out in (b)(1)(B) of this section," to "consider" five (5) additional factors. The five factors in subsection (c) are to be "considered" in making a determination whether

[16] Regulation 7 AAC 40.050 is expressly incorporated by reference. Therefore, if the Division has exercised its discretion to request "other evidence" concerning an applicant's circumstances pursuant to that regulation, the Division is required to base its determination of applicant's disability on that evidence, at least in part and to the extent that the information is applicable.

the applicant's alleged disability meets the SSA's "disability criteria for the listings of impairments." These five factors are incorporated by reference in subsection (b), part (1)(B). In other words, the factors of 7 AAC 40.180(c) are to be considered solely in relation to the applicant's alleged medical impairment(s) and not in relation to the other factors of 7 AAC 40.180(b).

Moreover, the Division is not to determine if an applicant is disabled by any or all of the factors of 7 AAC 40.180(c) but is to consider how the applicant's circumstances (in relation to the subsection (c) factors) contribute to the applicant's allegedly disabling medical conditions under 7 AAC 40.180(b)(1)(B).

Regulation 7 AAC 40.180(c) states:

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.

The requirements of 7 AAC 40.180(c), together with the requirements of 7 AAC 40.180(b)(2), (3), and (4) substantially incorporate considerations found in the federal five-step sequential evaluative process the Social Security Administration (SSA) applies to determine if an applicant is disabled and therefore eligible to receive Supplemental Security Income (SSI).[17] Because the SSI five-step sequential evaluation includes all of the factors which the Division must consider under Alaska regulation, and also provides standards for evaluating evidence which are not available in the Alaska regulations, the SSI evaluation process is helpful in understanding the Division's disability determination. This is discussed further in the analysis.

IV. Other Applicable Regulations: Federal SSI Regulations

The five-step process used by the SSA to determine if an applicant is eligible for SSI based on a disability is found at 20 C.F.R. § 416.920(a), called "Evaluation of disability of adults, in general." For purposes of this case, only steps one and two are relevant.

[17] Alaska regulation 7 AAC 40.030(a) concerning potential conflicts between state Interim Assistance regulations and federal SSI program regulations provides: "[i]f the requirements of [Adult Public Assistance benefits] conflict with requirements of the SSI program, the requirements of this chapter apply unless the requirements of the SSI program specifically supersede inconsistent state program provisions." Alaska has no regulation listing specific impairment categories applicable to disability determinations and incorporates federal regulations by reference in 7 AAC 40.180(b)(1).

Regulation 20 C.F.R. § 416.920(a) (4) sets out the five-step sequential evaluation process:

> The sequential evaluation process is a series of five ``steps'' that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step.
>
> …
>
> (i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled.
>
> (ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in Sec. 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled.
>
> (iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this
> chapter and meets the duration requirement, we will find that you are disabled. (See paragraph (d) of this section.)
>
> (iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and Sec. 416.960(b).)
>
> (v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and Sec. 416.960(c).

416.960(c).

At steps two and three, and applicant's medical evidence must satisfy the "duration requirement," described in 20 C.F.R. § 416.909. Regulation 20 C.F.R. § 416.909 states the duration requirement is: [u]less your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months." This duration requirement matches the duration requirement of Alaska regulation 7 AAC 40.180(c)(5). If the duration requirement is not met, the applicant is not eligible and the analysis stops. If the duration requirement is met, the analysis continues to determine if the alleged impairment(s) is "a severe medically determinable impairment."20 C.F.R. § 416.920(a)(4)(ii).

Federal SSI regulation 20 C.F.R. § 416.920a "Evaluation of mental impairments" sets out a complex methodology, termed a "special technique" which must be followed at each level in the SSA determination. Although the Division is not required to follow this complex methodology (because

this regulation is not incorporated as part of 7 AAC 40.180(b)(1)(B)(2) or any other State regulation), it is a helpful tool to assist determinations of disability based on mental impairments.[18]

ANALYSIS

I. Burden of Proof and Standard of Proof.

[18] Regulation 20 C.F.R. § 416.920a(b)(1) first evaluates the applicant's pertinent symptoms, signs, and laboratory findings to determine if the applicant has a medically determinable mental impairment(s). Then, under subsection (b)(2) of this regulation, the degree of functional limitation resulting from the impairment(s) is rated.

The rating process is described in 20 C.F.R. § 416.920a(c)(1)-(4). Subsection (c)(1) considers "all relevant evidence to obtain a longitudinal picture of your overall degree of functional limitations" including "clinical signs and laboratory findings, the effects of your symptoms, and how your functioning may be affected by factors including, but not limited to, chronic mental disorders, structured settings, medication, and other treatment."

Subsection (c)(2) provides that the applicant's degree of functional limitation is rated based on the "extent to which [the applicant's] impairment(s) interferes with [the applicant's] ability to function independently, appropriately, effectively, and on a sustained basis."

Subsection (c)(3) identifies four "broad functional areas" in which an applicant's functional limitations are rated: Activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation." Subsection (c)(3) refers to 20 C.F.R. Part 404, Subpart P, Appendix 1, 12.00 C.

Regulation 20 C.F.R. Part 404, Subpart P, Appendix 1, 12.00 C. describes, in detail, the four "broad functional areas" in which an applicant is rated when assessing the severity of an alleged mental impairment. Subsection C.(1) – Activities of daily living include "adaptive activities" such as cleaning, shopping, taking public transportation, paying bills, caring appropriately for your grooming and hygiene, using the telephone and post office, for example. The quality of these activities is assessed by their independence, appropriateness, effectiveness and sustainability. The assessment is to determine the extent to which the applicant is capable of initiating and participating in activities of daily living independent of supervision or direction.

Subsection C.2 rates the applicant's social functioning or capacity to interact independently, appropriately, effectively and on a sustained basis with other individuals. This area includes the ability to get along with others to get your needs met, communicate clearly with others, or interact and participate in group activities, for example.

Subsection C.3 rates the applicant's "ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings" in the area of concentration, persistence or pace. When rating an applicant, "mental status examination or psychological test data should be supplemented by other available evidence." Rating in this area considers the "nature and overall degree of interference with function."

Subsection C.4 rates the applicant in terms of "episodes of decompensation." Episodes of decompensation are 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." "The term *repeated episodes of decompensation, each of extended duration"* … means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks." (Emphasis in original.)

Regulation 20 C.F.R. § 416.920a(c)(4) provides that the first three broad functional areas are rated using a five point scale as "none, mild, moderate, marked, and extreme." 20 C.F.R. § 416.920a(c)(4).
The fourth broad area, episodes of decompensation, are rated using a four point scale as "none, one or two, three, four or more." "The last point on the scale represents a degree of limitation that is incompatible with the ability to do any gainful activity." 20 C.F.R. § 416.920a(c)(4).

If the degree of limitation in the first three functional areas are rated "none" or "mild" and "none" in the fourth area, the conclusions is that the applicant's alleged impairment(s) is not sever, unless other evidence indicates otherwise. 20 C.F.R. § 416.920a(d)(1).

Alaska Regulation 7 AAC 40.050(a) expressly provides "[a]ll applicants must "furnish adequate evidence to demonstrate … eligibility for assistance." More generally, as an applicant for Interim Assistance benefits, the Claimant has the burden of proving that she is eligible for the benefits she seeks. *See, State of Alaska Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, 1183 (Alaska 1986) Therefore, Claimant must prove she is eligible for Interim Assistance by a preponderance of the evidence at each step of the determination of whether he is disabled or not.

II. Issue

On February 14, 2011, was the Division correct when it denied Claimant's January 13, 2011 application for Interim Assistance benefits because Claimant did not meet the Adult Public Assistance program's Interim Assistance disability requirements?

III. Facts

Alaska Interim Assistance payments are aid to persons who are permanently and totally disabled. The aid is given to eligible applicants during the period the individual's application for Supplemental Security Income (SSI) as a disabled person is being determined by the Social Security Administration (SSA). 7 AAC 40.170. Disability is defined as "being unable to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months."[19] AS 47.25.615(5). An applicant for Interim Assistance must provide medical and other evidence proving the applicant meets these criteria and that the SSA is likely to find the applicant disabled. 7 AAC 40.180.

In this case, Claimant has provided the Preliminary Examination for Interim Assistance reports of two doctors diagnosing her with depression. One doctor classified the depression as MDD 296.3 (major depressive disorder, recurrent). This is the strongest evidence Claimant provided in support of her alleged impairment of depression.

In addition, Claimant claimed an alleged impairment of Post Traumatic Stress Disorder (PTSD), for which she was diagnosed in December 13, 2010 on one of the two Preliminary Examination for Interim Assistance reports. Other than this diagnosis, and Claimant's testimony that she was seeking a disability determination for the impairment of PTSD, there is no evidence that Claimant suffers PTSD.

Claimant's evidence did not include reports of medically acceptable clinical tests, clinical analyses or of reports of diagnostic tests. Claimant did not provide medical evidence consisting of signs, symptoms, and laboratory findings in support of her alleged impairments except the fact that she threatened to cut her wrist on September 4, 2010. Claimant's evidence from Mat-Su Regional Hospital

[19] The Alaska definition of "disability" is nearly identical to that of the Social Security Administration, Supplemental Security Income (SSI) definition. The definition of "disability" for SSI purposes is: "the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 10 C.F.R. §416.905(a).

and Alaska Psychiatric Institute arose from a single cause, that is, her separation from her husband. Claimant's visits to these medical establishments resulted from the concerns of other people for Claimant's action of threatening to cut herself with a knife and of being upset about her separation. Claimant offered no medical records documenting repeated episodes of decompensation.

In addition to the two Preliminary Examination for Interim Assistance reports, one of which showed Claimant was expected to recover or be in remission within 12 months, Claimant's evidence consists of:

1. The report of an emergency room visit of about 3 hours at Mat-Su Regional Hospital on September 4, 2010 resulting from her election to go there in lieu of being arrested, because she threatened to cut her wrist during a domestic incidence pertaining to her separation from her husband.

2. The report of the Alaska Psychiatric Institute (API) psychological evaluation during an overnight admission for evaluation on September 14-15, 2010 which resulted from Claimant's daughter requesting police intervention because the daughter feared Claimant was suicidal about her separation from her husband. Claimant denied suicidal ideation at the hospital. The API report did not result in a diagnosis of depression and Claimant was evaluated as ready for discharge after the evaluation and was discharged immediately. The API report notes that Claimant's condition at discharge was "angry but she is coping relatively well under extreme stress." Claimant was discharged with the plan that she obtain "follow-up with Mat-Su Behavioral Health.

3. The report of Mat-Su Health Services, Inc. that showed Claimant had been evaluated for treatment and that her treatment plan was specifically for "Individual Skills Development." The evaluation specifically sought to rule out bipolar disorder. The treatment plan found appropriate for Claimant was not treatment for depressive disorder, bipolar disorder, or post traumatic stress disorder. The treatment plan provided Claimant with assistance managing her moods, dealing with her marital separation, obtaining dental care, and learning to enhance her short term memory. The treatment plan does not identify or address clinical signs or symptoms of depression nor incorporate, or even refer to, laboratory findings. The Mat-Su report supports the conclusion that Claimant needs help coping with the major stressor of the breakup of her 30 year marriage, has obtained that assistance, and is carrying on the activities of daily life reasonably well.

4. Claimant also supplied records concerning medical treatment in 1984-1985. Nothing in these records constitutes medical evidence of a diagnosis for depressive disorder or PTSD.

5. Claimant supplied the letter from her former husband, with whom she alleges she was in a "severely abusive relationship" for 14 years, in which he writes that Claimant was kept for observation for 24 or 48 hours in a hospital in 1970 or 1971 because Claimant slit both of her wrists. This letter is not medical evidence but does show that about 40 years ago, Claimant slit her wrists.

6. Claimant's testimony contra-indicated that she is suffering from debilitating depression. Claimant's testimony supported the API report finding that Claimant is angry but is coping well with her day to day stresses. See Finding of Fact 15.

IV. Claimant's alleged impairment of Post Traumatic Stress Disorder (PTSD)

Claimant's sole evidence of a diagnosis of PTSD is the notation that her family doctor diagnosed her with PTSD on a December 13, 2010 Preliminary Examination for Interim Assistance (AD 2) form.

This diagnosis is unsupported by counseling records, diagnostic tests, or medical reports. Even considering the medical records from 1984 – 1985, and her first husband's recollection that Claimant spent 24-28 hours in a psychiatric hospital around 1970-1972, there is no documentation that Claimant suffers or has suffered impairment because of PTSD. Claimant's assertion that her first husband severely abused her and consequently she has PTSD is her strongest evidence of PTSD. But Claimant's evidence from the first husband is supportive of Claimant's need for medical information. This suggests Claimant's allegation that she suffers PTSD as a consequence of her first marriage needs further evaluation; it does not support her contention she has the severely medically determinable impairment of PTSD. Claimant has not met her burden of proving by a preponderance of the evidence that she is permanently and totally disabled because of post traumatic stress disorder.

Therefore, the Division did not err in finding that Claimant is not permanently and totally disabled due to PTSD. Claimant has not met her burden of proving she suffers a severe medical impairment of PTSD.

IV. The Division's Denial Decision Concerning Depression.

Alaska regulation 7 AAC 40.180(b)(1) requires the Division to base its determination, in part, on its review of the medical evidence to assess whether the Claimant "is likely to be found disabled by the Social Security Administration." In this case, the Division noted that the Social Security Administration had denied Claimant's application. In particular, the Division denied Claimant's application because it determined her alleged impairment(s) did not meet the criteria to be considered "severe" impairment(s) and Claimant's medical evidence did not show she was severely impaired for the past 12 months, or expected to be severely impaired for the future 12 months or until death. Therefore, the Division determined that it was not likely that the SSA would find Claimant disabled.

A disability determination must rest on the factors identified in 7 AAC 40.180(b)(1). This regulation requires the Division to review Claimant's medical evidence to determine whether the Social Security Administration (SSA) "is likely" to find Claimant disabled. If the SSA already has determined Claimant is not disabled, as in this case, the Division must consider the SSA's action as part of its determination. However, the Division cannot deem the SSA's action conclusive if Claimant has appealed the SSA's determination. In this case, Claimant did appeal the SSA's denial of her application. Therefore, the Division appropriately considered Claimant's circumstances by applying the SSI five-step sequential evaluation used by the SSA in determining disability.

The Division can consider if the SSA will be likely to determine Claimant disabled by applying the SSA's five-step evaluation technique as described in 20 C.F.R. § 416.920(a)(4).

A. Step 1: Is Claimant Performing Substantial Gainful Activity?

SSI regulation 20 C.F.R. § 416.920(a)(4)(i) is the first of the five-step sequential evaluation. The first step of the disability analysis is whether the Claimant is performing "any substantial gainful activity". Regulation 20 C.F.R. § 416.971-.976 addresses what is meant by "substantial gainful activity." In general, "substantial gainful activity" is "work activity that involves doing significant physical or mental activities" [20 C.F.R. § 416.972(a)] and "activity" that "is the kind of work usually done for pay or profit." [20 C.F.R. § 416.972(b)].

It is undisputed that at all times relevant to this case, Claimant was not employed or engaged in any "substantial gainful activity" at any time during her application period and had not been employed

during 30 years of marriage. Claimant reported in her Disability and Vocational Report that she did not work "outside the home," except for about one year when she was a costume shop manager and seamstress. Because Claimant has not worked outside the home and was not working outside the home at the time of her applications, the evaluation of this step is not relevant.

B. Step 2: Does Claimant Have a Severe Impairment?

The SSA next considers the "medical severity" of the alleged impairment(s). 20 C.F.R. § 416.920(a)(4)(ii). The applicant must show that the individual suffers a medically severe impairment that meets the duration requirement. 20 C.F.R. § 416.920(a)(4)(ii).

First, Claimant does not meet the duration requirement. Claimant's Preliminary Examination for Interim Assistance categorized Claimant's depression as "major depressive disorder, recurrent." However, Claimant's medical evidence pertains to her reaction to her separation from her husband of 30 years, which occurred September 4, 2010, less than 12 months from the date of any of her applications.

The reports of her visits to the emergency room on September 4, 2010 and for evaluation at API on September 14-15, 2010 do not support a diagnosis of major depressive disorder, or even depression. The reports note Claimant was discharged shortly after evaluation because she could cope, and was coping, with the extreme stress of her separation. Not only is this event less than 12 months before Claimant's application, but it indicates her symptoms are not likely to endure 12 additional months because the report indicates she might already have recovered from the episode at the time of discharge.

Moreover, Claimant's Preliminary Examination for Interim Assistance report indicated she was expected to recover within 12 months.[20]

Additionally, Claimant provided no medical evidence during the period of her marriage, except medical records from about 27 years prior. These aged medical records do not diagnose Claimant with depressive disorder and do not describe clinical signs, symptoms and/or laboratory findings supporting a diagnosis of depressive disorder.

Finally, considering the duration requirement in light of the facts, it is clear that Claimant could not meet the duration factor, in terms of lapse of time.

Therefore, Claimant did not meet her burden of proving she had, or would have, a medically severe impairment of depression for a continuous period of 12 months. Claimant is not likely to be found disabled by the SSA because she does not meet the threshold duration test for a "severe medically determinable mental impairment." 20 C.F.R. § 416.920(a)(4)(ii).

Therefore, no further analysis is needed. For the reasons above discussed, the Division was correct to determine that Claimant is not permanently and totally disabled for purposes of eligibility for Interim Assistance benefits. 7 AAC 40.170; 7 AAC 40.180.

CONCLUSIONS OF LAW

[20] The doctor completing the other report did not answer the question regarding period of expected recovery, if any.

1. Claimant did not meet her burden of proving by a preponderance of the evidence that she has suffered a severe medically determinable mental impairment that has lasted or is expected to last for a period of 12months. 7 AAC 40.180(c)(5).

2. Claimant did not meet her burden of proving that she is likely to be found disable by the Social Security Administration. 7 AAC 40.180(b)(1).

3. Claimant failed to meet her burden of proving by a preponderance of the evidence that she has a medically severe impairment such that the Social Security Administration is likely to determine her permanently and totally disabled. 7 AAC 40.170; 7 AAC 40.180.

DECISION

On February 14, 2011, the Division was correct when it denied Claimant's January 14, 2011[21] Application for Interim Assistance benefits because Claimant did not meet the eligibility criteria to receive Interim Assistance benefits.

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 September 17, 2011.

/signed/
Claire Steffens
Hearing Authority

[21] This conclusion applies to each of Claimant's applications, re-applications, or purported applications (December 15, January 14, and her request for reconsideration resulting in the Division's denial on April 4, 2011), as stipulated during the Fair Hearing on August 4, 2011.

CERTIFICATE OF SERVICE

I certify that on September 17, 2011 a copy of this document was sent to Claimant via USPS Certified Mail, Return Receipt Requested

By:_____*/signed/*_____

I certify that on September 19, 2011 copies of this document were sent to the following by secure, encrypted e-mail, as follows:

[redacted], DPA Hearing Representative
[redacted], DPA Hearing Representative
[redacted], Policy & Program Development
[redacted], Staff Development & Training
[redacted], Administrative Assistant II
[redacted], Eligibility Technician I

By:_____*/signed/*_____
J. Albert Levitre, Jr.
Law Office Assistant I