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

In the Matter of ██████████)
██████████) OHA Case No. 12-FH-95
██████████)
Claimant.) Division Case No. ██████████

FAIR HEARING DECISION

I. INTRODUCTION

Ms. ██████████ (Claimant) applied for Interim Assistance benefits on January 18, 2012 asserting she is disabled by mental illness and shoulder pain. (Exs. 1, 2) The Department of Health and Social Services, Division of Public Assistance (Division) denied her application and she appealed. (Ex. 3)

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

Claimant has the burden of proving that she is eligible for the benefits for which she is applying.¹ Claimant must meet her burden of proof by a preponderance of the evidence.² Claimant did not meet her burden.

II. FACTS

A. Procedural History

Claimant submitted an application for Interim Assistance benefits on January 18, 2012. (Exs. 1, 2) On March 9, 2012, the Division determined Claimant was not eligible for Interim Assistance benefits because she was not disabled according to the Social Security Administration's (SSA) Supplemental

¹ 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." Interim Assistance is a public assistance benefit program provided as Alaska Adult Public Assistance.

² 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. See, *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 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).

Security Income (SSI) criteria. (Ex. 3) On March 12, 2012, the Division gave Claimant written notice it had denied her application. (Ex. 5) On March 14, 2012, Claimant appealed by requesting a Fair Hearing, asserting she is physically and mentally unable to work. (Ex. 4) On March 16, 2012, Claimant supplied medical records as additional documentation in support of her application. (Ex. 6-6.18) On March 19, 2012, the Division received notice from the Disability Adjudicator that, after reviewing the additional medical records, she had not changed her determination that Claimant was not disabled. (Ex. 6) On April 11, 2012, the Division notified Claimant it still was denying her application because she was not likely to be found disabled by the SSA. (Ex. 7)

A Fair Hearing began on April 17, 2012 and continued on May 17, 2012. Claimant attended and was assisted by Ms. [REDACTED], her mother, each of whom testified by telephone. The Division was represented by Mr. [REDACTED], Public Assistance Analyst who testified in person on its behalf. Ms. [REDACTED], the Division's Medical Reviewer and Disability Adjudicator, participated telephonically and testified as the Division's witness.

Claimant asserts her ability to work and carry on daily activities is impaired by 1) "Bi-Polar/Manic" and by 2) her right shoulder, which "hurts all the time, tingling, numb." (Ex. 3.5) Claimant initially supported her application with Preliminary Examination for Interim Assistance (AD 2) form completed by Dr. [REDACTED], M.D., and [REDACTED] (?), signed on January 30, 2012 (Exs. 3.3-3.4); Claimant's Disability and Vocational Report, signed by Claimant on January 18, 2012, (Exs. 3.5-3.10); and medical records from the [REDACTED], Emporia, Kansas (Exs. 3.12-3.3.74). Claimant provided supplementary medical documents from Mat Su Health Services, Inc. on March 13, 2012. (Exs. 6.1-6.18) After reviewing these additional documents, the Division again denied Claimant's application because it determined she was not likely to be found eligible for Supplemental Security Income (SSI) benefits, hence did not meet eligibility requirements for Interim Assistance. The Division notified her of its denial on April 1, 2012. (Ex. 7)

B. Facts Relevant to the Disability Claim

Claimant was almost 49 years old when she filed for Interim Assistance. (Ex. 3.3) Claimant previously worked as a home health caregiver and certified nursing assistant (CNA) caring for elderly individuals, and as a custodian. (Ex. 3.7) She has a 9th grade education, and in 1989 completed certified nursing assistant training. (Ex. 3.9) Claimant is certified for OSHA inspections but never worked as an OSHA inspector. (Claimant's testimony)

At the the time of the hearing on May 17, 2012, Claimant was working two days a week. (Claimant's testimony; Mother's testimony) Claimant works at [REDACTED] as a maid for 8 hours on each of the two weekend days. She started working on or about April 28-29, 2012. She makes beds, vacuum, stock bathrooms, clean bathrooms, and dusts. (Claimant's testimony) Claimant stated she is working only because she "has to" and is doing so against her doctor's orders that she should not be working "physically or mentally." (Claimant's testimony) Claimant's doctor also told her she could not

lift more than 20 pounds while working. (Claimant's testimony) These statements are inconsistent and not supported by medical evidence in the record.³

Claimant's application for SSI was denied by the Social Security Administration (SSA) and her application for SSI was terminated effective January 28, 2010. (Ex. 12) The SSA record show a 2012 payment status as "T51" which SSI Payment Status Codes explain as "terminated/system generated termination – no payment previously made." (Ex. 12.1) The SSA record shows the reason why SSA denied Claimant's SSI application as "N32" explained as "Non-pay capacity for substantial gainful activity – other work – no visual impairment." (Ex. 12.1) There is no evidence in the record that Claimant subsequently applied for SSI or appealed the 2010 denial.

III. DISCUSSION

Interim Assistance is aid to "permanently and totally disabled" Alaskans paid to a recipient of Adult Public Assistance while he or she is waiting for the federal Social Security 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 also*, 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. A fundamental requirement is that an applicant, whose income falls within SSI income standards, must apply for SSI within 30 days after the date of application for Interim Assistance. 7 AAC 40.060(a). The Division proved Claimant's SSI application was terminated in 2010. There is no evidence that Claimant applied for SSI within 30 days after she applied for Interim Assistance on January 18, 2012. Therefore, Claimant is not eligible for Interim Assistance because she does not meet this eligibility requirement.

However, the Division denied Claimant's application because it determined she did not meet the SSA's SSI eligibility requirements. When making its determination whether Claimant is disabled, the Division applies the same evaluation process and similar requirements⁴ as are applied by the federal Social Security Administration (SSA) when it makes a disability determination of an applicant 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.

The first step in determining if an applicant is disabled for purposes of SSI eligibility is to determine if the applicant is doing "substantial gainful activity." 20 C.F.R. § 416.920(a)(4)(i). Substantial

³ The sole evidence in the record of Claimant's work restriction is found as part of routine chart notes repeated on every one of 12 visits to the [REDACTED], Emporia, Kansas from the starting date of April 27, 2010 through February 21, 2011. The notation is: "Functional: Physical Disability Based on restricted activity to light duty due to neck fusion. Normal activities of daily living." (*See* Exs. 3.13, 19, 22, 26, 29, 33, 37, 41, 45, 49, 53, and 60) On June 2, 2011, the last medical record provided from the Kansas [REDACTED], the notation changes to: "Functional: Normal activities of daily living." (Ex. 64) The Preliminary Examination for Interim Assistance form dated January 30, 2012, includes the comment: "[t]he client is unable, because of physical & mental health problems, to be employed [sic], at this time. Client may qualify in the future for Dept. of Voc. Rehab. as she cannot work in previous occupation as a CNA." (Ex. 3.4) There is no medical documentation in the record supporting this comment, and the author contemplates Claimant is not permanently disabled from doing all work .

⁴ The requirements are not identical, but very similar.

gainful activity is defined at 20 C.F.R. § 416.910 as work that involves doing significant and productive physical or mental duties and is done, or intended to be done for pay or profit. *See also*, 20 C.F.R. §§ 416.971-976. Part time work may constitute substantial gainful activity. 20 C.F.R. § 416.972. If the applicant is performing substantial gainful activity, the applicant is not disabled. 20 C.F.R. §§ 416.920(a)(4)(b).

Although, there is no evidence that Claimant was working at the time of her application on January 18, 2012, she began working for pay on weekends as a hotel maid on or about April 28, 2012. This work constitutes substantial gainful activity, as defined by 20 C.F.R. § 416.972. Because Claimant is performing substantial gainful activity, she is not disabled according to SSI eligibility criteria. 20 C.F.R. § 416.920(a)(4)(b). On the other hand, if Claimant is disregarding her doctor's advice that she a) not lift more than 20 pounds at work; or b) not work at all, she cannot be determined disabled. 20 C.F.R. § 416.930(b). The preponderance of the evidence is that Claimant can perform physical work and will be able to work in the future.

An eligibility requirement for receipt of Interim Assistance benefits is that the applicant is likely to be found disabled by the SSA, as determined by the Division. Because Claimant is engaged in substantial gainful activity, she is not likely to be found disabled by the SSA. Claimant is not eligible for Interim Assistance because she does not meet this requirement, also.

IV. CONCLUSION

Claimant has not proved by a preponderance of the evidence that she is eligible for Interim Assistance benefits.

DATED June 28, 2012.

Signed

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 28, 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:

[REDACTED], Public Assistance Analyst
[REDACTED], Public Assistance Analyst
[REDACTED], Staff Development & Training
[REDACTED], Admin. Assist. Dir.
[REDACTED], Policy & Program Development
[REDACTED], Admin. Asst. Policy

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