

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of )  
 )  
K Q ) OAH No. 14-0192-APA  
 ) Division No.  
\_\_\_\_\_ )

**FAIR HEARING DECISION**

**I. Introduction**

K Q applied for Interim Assistance on December 18, 2013.<sup>1</sup> A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Ms. Q was severely mentally impaired, but that she did not qualify for Interim Assistance. The Division notified Ms. Q that her application was denied. She requested a hearing.

Ms. Q’ hearing was held on April 22, 2014. Ms. Q represented herself. Terri Gagne, Public Assistance Analyst with the Division, represented the Division. The record was held open after the hearing for Ms. Q to submit additional medical records. She did not avail herself of the opportunity.

This decision concludes that Ms. Q has a severe mental impairment, specifically Post Traumatic Stress Disorder (PTSD). However, her severe mental impairment does not meet or equal the applicable Social Security disability listing. Additionally, there is no medical evidence that supports a finding that she is unable to work. She therefore did not prove by a preponderance of the evidence that she satisfies the Interim Assistance program’s eligibility requirement that she be “likely to be found disabled by the Social Security Administration.”<sup>2</sup> The Division’s decision denying her Interim Assistance application is affirmed.

**II. Facts**

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

Ms. Q is 46 years old.<sup>3</sup> She has a 10<sup>th</sup> grade education and is literate in English. She has virtually no work history, having only worked once for a very brief time in a motel, which occurred approximately 10 years ago.<sup>4</sup> The October 23, 2013 “Preliminary Examination for Interim Assistance” form completed by Ms. Q’s psychiatrist states her diagnosis is PTSD; that

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<sup>1</sup> Ex. 1.

<sup>2</sup> See 7 AAC 40.180(b)(1).

<sup>3</sup> Ex. 1.

<sup>4</sup> Exs. 3.370 – 3.374; Ms. Q testimony.

she is not expected to recover from this illness; and that she “has for many years had PTSD – within the last year it has made it impossible to work.”<sup>5</sup>

Ms. Q has a number of medically documented physical impairments, which include pancreatitis, osteoarthritis, back pain, abdominal pain, and chronic lung disease.<sup>6</sup> Her medical records do not show that she has any physical limitations. She testified that she also has traumatic brain injury that affects her memory. However, there is no medical diagnosis of traumatic brain injury in the record.<sup>7</sup>

Ms. Q presented psychiatric records dating back to February 2013. Those records show the following:

- February 14, 2013: Ms. Q seemed less anxious; her thoughts were organized; she had a depressed mood; her sleep was poor; she was not suicidal, nor anhedonic, nor hopeless.<sup>8</sup>
- March 26, 2013: Ms. Q was seen at the emergency room for increased depression, severe anxiety, paranoia, and suicidal ideation.<sup>9</sup>
- April 18, 2013: Ms. Q was sad and depressed; her anxiety was “relatively well controlled”; her sleep was poor; she experienced intrusive memories and nightmares; she was not suicidal, but was experiencing some suicidal thoughts.<sup>10</sup>
- May 16, 2013: Ms. Q was being physically active and doing better overall. Her sleep was poor, but she was otherwise doing well.<sup>11</sup>
- September 4, 2013: Ms. Q was depressed but less anxious; she was having suicidal thoughts; she was experiencing nightmares. She was active in her church and would seek help there if her situation worsened.<sup>12</sup>
- October 23, 2013: Ms. Q was depressed and having nightmares.<sup>13</sup>

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<sup>5</sup> Exs. 1.375 – 1.376.

<sup>6</sup> Exs. 1.16, 1.23.

<sup>7</sup> There is an October 23, 2013 psychiatric note in Ms. Q’ records showing a head injury related to a recent fall. Ex. 1.351. However, there is no indication of a traumatic brain injury diagnosis or cognitive testing.

<sup>8</sup> Ex. 1.344.

<sup>9</sup> Exs. 1.238, 1.337.

<sup>10</sup> Ex. 1.345.

<sup>11</sup> Ex. 1.346.

<sup>12</sup> Ex. 1.350.

<sup>13</sup> Ex. 1.351.

- November 20, 2013: Ms. Q was doing better. She was active in her church; her anxiety level was low; “she was calm, organized”; she was still sleeping poorly and having nightmares.<sup>14</sup>
- December 18, 2013: Ms. Q was less depressed; she was calm; she was still not sleeping through the night.<sup>15</sup>
- January 3, 2014: Ms. Q was seen at the emergency room. Her diagnosis was anxiety, inhalation injury, and a chemical burn. Her psychiatric status was described as “[c]ooperative, appropriate mood & affect, normal judgment.”<sup>16</sup>
- January 22, 2014: Ms. Q was “somewhat depressed but doing better.” She was not suicidal, and her mood was “noticeably better” and her anxiety was under “good control.”<sup>17</sup>

Ms. Q testified that she had been subjected to childhood and adult abuse, which included sexual assaults and severe domestic violence. She has severe anxiety attacks and nightmares. She stated that she goes through major depressive episodes several times per month where she will not leave her home, she will not bathe or eat or otherwise care for herself.<sup>18</sup>

H X has been a friend of Ms. Q for approximately ten years. He testified that Ms. Q had been severely abused in the past. He said her level of functioning was highly impaired, and that she had no social contacts. He takes her shopping and it takes her a very long time because she “loses it.” However, he thinks she has improved since she got her own place to live.<sup>19</sup>

Jamie Lang, the Division’s medical reviewer, determined that Ms. Q was severely impaired by her mental impairment, but was not likely to meet the Social Security Administration’s (SSA) disability criteria. She stated that the medical evidence did not show that Ms. Q’s condition met or equaled the Social Security disability listing requirements for mental impairments contained in disability listing 12.06 (Anxiety-related disorders). She specifically found that the medical evidence did not show functional limitations in Ms. Q’s activities of daily living, socialization, concentration, persistence and pace, and that there had

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<sup>14</sup> Ex. 1.352.  
<sup>15</sup> Ex. R.  
<sup>16</sup> Ex. 1.27.  
<sup>17</sup> Ex. S.  
<sup>18</sup> Ms. Q’ testimony.  
<sup>19</sup> Mr. X’s testimony.

been no recent hospitalizations. The Division then denied Ms. Q’s application for Interim Assistance.<sup>20</sup>

### III. Discussion

#### A. *The Five-Step Disability Determination Process*

The Adult Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”<sup>21</sup> Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.<sup>22</sup> Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.<sup>23</sup>

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.<sup>24</sup>

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>25</sup> An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.<sup>26</sup>

The SSA uses a five-step evaluation process in making its disability determinations.<sup>27</sup> Each step is considered in order.<sup>28</sup> In 2012, a Commissioner’s level decision held that the Division should only use the first three steps of the SSA disability determination process, and not the full five-step evaluation process, in deciding whether an applicant qualifies for Interim Assistance.<sup>29</sup> However, that decision was appealed to the Superior Court. The Superior Court “vacate[d] the Commissioner’s decision and remand[ed] [the case] to the Department for a

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<sup>20</sup> Ex. 2.1 – 2.5; Jamie Lang’s testimony.

<sup>21</sup> AS 47.25.430.

<sup>22</sup> 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

<sup>23</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>24</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>25</sup> 7 AAC 40.180(b)(1).

<sup>26</sup> 7 AAC 49.135.

<sup>27</sup> 20 C.F.R. § 416.920.

<sup>28</sup> Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

<sup>29</sup> *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

disposition in accordance with requirements set forth by the SSA 5-part test.”<sup>30</sup> The Superior Court decision is persuasive authority for the point that the full five-step evaluation process should be used in these Interim Assistance cases. Accordingly, this decision will proceed to steps four and five, if the applicant does not qualify at step three.

Each step of the five-step evaluation process is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.<sup>31</sup> The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find the applicant is not disabled.<sup>32</sup>

At step two, the SSA considers the severity and duration of the applicant’s impairment. Medical evidence, which consists of “signs, symptoms, and laboratory findings, not only [the applicant’s] statement of symptoms,” is required to establish an applicant’s impairment.<sup>33</sup> In order to be considered disabled, the impairment or combination of impairments must be severe,<sup>34</sup> must be expected to result in death, or must have lasted or be expected to last at least 12 months.<sup>35</sup> If the impairment is not severe or does not meet the duration requirement, then the applicant is not disabled. If the impairment is severe and meets the duration requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled<sup>36</sup> and qualifies for Interim Assistance. If the applicant’s impairment does not meet or equal one of the SSA listings, it is necessary to move on to step four.

At step four, which applies to applicants determined not to be disabled at step three, the SSA looks at the applicant’s capacity for work and past relevant work. If the applicant is able to

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<sup>30</sup> *Gross v. State, Dept. of Health and Social Services*, Anchorage, Alaska Superior Court Case No. 3AN-12-0938 CI (Marston, J., September 26, 2013). While a Petition for Review is currently pending in the Alaska Supreme Court, the Superior Court decision has not been stayed. (Alaska Supreme Court Case No. S-15339).

<sup>31</sup> 20 C.F.R. § 416.920(a)(4).

<sup>32</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>33</sup> 20 C.F.R. § 416.908.

<sup>34</sup> A severe impairment is one that “significantly limits [a person’s] physical or mental ability to do basic work activities.” 20 C.F.R. § 416.920(c).

<sup>35</sup> 20 C.F.R. § 416.920(a)(4)(ii); 20 C.F.R. § 416.909.

<sup>36</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

perform his or her past relevant work, the applicant is not disabled.<sup>37</sup> If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

Step five requires an answer to the question of whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience.<sup>38</sup> If the applicant is not capable of performing other work, he or she is disabled.<sup>39</sup>

**B. Application of the Five-Step Process**

1. Steps One and Two

The Division's decision to deny Ms. Q's application was based upon the review by Jamie Lang, its medical reviewer. She determined that Ms. Q satisfied steps one and two, being that she is not currently working and that she had a severe mental impairment<sup>40</sup> that had lasted or was expected to last for at least 12 months.<sup>41</sup>

2. Step Three

Ms. Lang determined that Ms. Q did not meet or equal the applicable Social Security disability listings. Ms. Q has one psychiatric diagnosis listed on the Division's Preliminary Examination for Interim Assistance form, which is PTSD. PTSD is classified under disability listing 12.06 (Anxiety-related disorders).

In order to meet or equal the requirements of disability listing 12.06 (Anxiety-related disorders), Ms. Q must satisfy the following criteria:

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

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

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or

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<sup>37</sup> 20 C.F.R. § 416.920(a)(4)(iv).

<sup>38</sup> See 20 C.F.R. Part 404, Subpart P, App. 2, § 201.

<sup>39</sup> 20 C.F.R. § 416.920(a)(4)(v).

<sup>40</sup> While Ms. Q has a number of physical impairments, there is no showing that these are severe. In addition, her psychiatrist put down a diagnosis of PTSD on the Preliminary Examination for Interim Assistance form. See Exs. 1.375 – 1.376.

<sup>41</sup> Lang testimony; Ex. 3.3.

- c. Apprehensive expectation; or
- d. Vigilance and scanning; or
- 2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
- 3. Recurrent severe pain attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
- 4. Recurrent obsessions or compulsions which are a source of marked distress; or
- 5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress:

AND

B. Resulting in at least two of the following:

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

OR

C. Resulting in complete inability to function independently outside the area of one's home.<sup>[42]</sup>

Ms. Q satisfies the "A" criteria for disability listing 12.06 due to her diagnosis.<sup>43</sup> In order to meet or equal the listing, she must satisfy either the "B" or "C" criteria. However, there is no medical evidence that would support a finding that she meets any of the "B" criteria because the medical evidence does not show Ms. Q is restricted in her activities of daily living, or that she has difficulties in her social functioning, or that she has difficulties in maintaining her concentration, persistence, or pace. While Ms. Q and Mr. X testified regarding her difficulties with day to day functioning, that is not medical evidence. There was also no medical evidence showing repeated episodes of decompensation. Ms. Q has not shown that she satisfies the "B" criteria. There is similarly no medical evidence showing that Ms. Q satisfies the "C" criteria by being completely unable to function independently outside her own home. As a result, Ms. Q' severe mental impairment does not meet or equals Social Security Disability listing 12.06.

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<sup>42</sup> 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.06.

<sup>43</sup> Ms. Lang's testimony.

4. Step Four

The next step in the disability determination process is to determine whether Ms. Q can perform her previous relevant work. However, Ms. Q has virtually no work experience of any type and has only a 10<sup>th</sup> grade education. Due to this, she has no previous relevant work against which to measure her current work ability. This decision will therefore use the unskilled work category, *i.e.*, work for which no prior experience or training is necessary. There is no medical evidence in this case showing that Ms. Q is not capable of performing unskilled work. While she most likely is not able to perform heavy labor, given her other medical conditions (pancreatitis, osteoarthritis, back pain, abdominal pain, and chronic lung disease), there is no indication in the evidence that she cannot perform light to moderate levels of unskilled work. Accordingly, because Ms. Q still retains the ability to perform unskilled work, she is not disabled.

**IV. Conclusion**

Ms. Q has not met her burden of proving that she is likely to meet the Social Security Administration's criteria for disability. The Division's decision to deny her application for Interim Assistance benefits is affirmed.

DATED this 17<sup>th</sup> day of June, 2014.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

**Adoption**

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

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

DATED this 1<sup>st</sup> day of July, 2014.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge, DOA/OAH

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