

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

In the Matter of:)
) OAH No. 14-0592-APA
 L A. T) DPA Case No.
)
_____)

DECISION

I. Introduction

The issue in this case is whether L T satisfies the Interim Assistance program's disability criteria. The Division of Public Assistance (DPA or Division) concluded that, although Ms. T is unemployed, and although she suffers from a severe impairment, her impairment has not yet lasted long enough to satisfy the 12 month durational requirement, and her impairment does not satisfy the specific criteria of any of the Social Security Administration's applicable impairment "Listings."¹ The Division therefore denied Ms. T' application for Interim Assistance.²

This decision concludes that Ms. T is unemployed, that she suffers from an impairment which is medically severe, and that her impairment satisfies the 12 month durational requirement. However, Ms. T' impairment does not currently satisfy the specific criteria of any of the SSA's applicable impairment "Listings." As a result, Ms. T does not satisfy the Interim Assistance program's eligibility requirement that she be "likely to be found disabled by the Social Security Administration."³ The Division's decision denying Ms. T' application for Interim Assistance is therefore affirmed.⁴

II. Facts

A. Ms. T' Medical Condition, Impairments, Education, and Work History

Ms. T is 55 years old.⁵ She has diagnoses including colitis, gastroesophageal reflux disease (GERD), hyperlipidemia, hypertension, irritable bowel syndrome (IBS), migraine headaches, and thyroid disease.⁶ Ms. T broke an elbow in 1981, broke her tibia and fibula in 1993, slipped on ice and hit her head and broke her left wrist in December 2011, and slipped again on ice and hit her

¹ Exs 2.0 - 2.0(d); Jamie Lang hearing testimony.

² Ex. 3.

³ 7 AAC 40.180(b)(1).

⁴ Should Ms. T' condition deteriorate, she may reapply for Interim Assistance at any time.

⁵ Exs. 1, A4.

⁶ Exs. 2.6, 2.7.

head in January 2013.⁷ In 2011 Ms. T had a transient ischemic attack (TIA), possibly foreshadowing her current medical problems.⁸

On November 29, 2013 Ms. T noticed that the left side of her face felt strange.⁹ On November 30, 2013 Ms. T presented to Providence Alaska Medical Center's emergency room (ER) with left-sided facial droop and weakness, and tingling in her left arm.¹⁰ Magnetic resonance imaging (MRI) scans were taken of Ms. T' brain. They revealed only nonspecific microischemic changes associated with age. Computed Tomography Angiography (CTA) scans were taken of Ms. T' head and neck, but they did not reveal any hemodynamically significant atherosclerosis. Ms. T' internal carotid arteries had an appearance suggestive of fibromuscular dysplasia, and her thyroid appeared to be multi-nodular. Ms. T was diagnosed as having left-sided Bell's Palsy¹¹ and was treated with steroids and antivirals. These treatments were not effective, however, and Ms. T' symptoms did not improve.¹² As of February 21, 2014 Ms. T' treating physician, Kevin Isakson, M.D., had concluded that it was more likely that Ms. T' symptoms were due to a CVA (cerebrovascular accident or stroke) than to Bell's palsy.¹³

On March 10, 2014 Ms. T felt "woozy" and later developed a tingling sensation in her mouth, a decreased sense of taste, right-side facial weakness, and pain in her right lower leg.¹⁴ She went to the Providence ER on March 15, 2014 and had a brain MRI to rule-out an acute stroke; the MRI showed no evidence of an acute or subacute infarct, and showed no significant change from the MRI taken in November 2013.¹⁵ Even so, Ms. T' primary care physician disagreed with her prior Bell's palsy diagnosis, thinking it more likely that she had suffered a stroke.¹⁶

⁷ Exs. A6, A11, and B6.

⁸ Ex. 2.72. A TIA is when blood flow to a part of the brain stops for a brief period of time, causing stroke-like symptoms.

⁹ Ex. 2.15; L T hearing testimony.

¹⁰ All factual findings in this paragraph are based on Exs. A5, A10, B5, B12, and 2.15 unless otherwise stated.

¹¹ Bell's palsy is a form of facial paralysis resulting from a dysfunction of the cranial nerve VII (the facial nerve) causing an inability to control facial muscles on the affected side. See website of the National Institute of Neurological Disorders and Stroke, accessed at http://www.ninds.nih.gov/disorders/bells/detail_bells.htm on July 8, 2014. Several different conditions can cause facial paralysis (brain tumors, stroke, myasthenia gravis, and Lyme disease, for example). *Id.* However, if no specific cause can be identified, the condition is known as Bell's palsy. *Id.* Named after Scottish anatomist Charles Bell, who first described it, Bell's palsy is the most common disease involving only one nerve, and is the most common cause of acute facial nerve paralysis. *Id.*

¹² Ex. 2.67.

¹³ Ex. 2.74.

¹⁴ All factual findings in this paragraph are based on Exs. A5, A10, B5, B12, and 2.38 unless otherwise stated.

¹⁵ Exs. 2.41, 2.51, 2.82.

¹⁶ Ex. 2.43.

On March 17, 2014 Ms. T was examined at the No Name Neighborhood Health Center (NNNHC).¹⁷ At this time she could not seal her mouth, her tongue was deviating to the right, she was having difficulty eating and swallowing, and she was still unable to close her eyes. She had a chest x-ray, which was normal.¹⁸ However, her treating physician, Dr. Kevin Isakson, M.D., wrote that he was "greatly concerned that this patient may have a rapidly progressing neurologic degenerative process." Dr. Isakson's notes indicate that he was considering Sjogren's Syndrome and Myasthenia Gravis as potential diagnoses at the time.

On March 19, 2014 Ms. T was examined again at NNNHC.¹⁹ At this time it was found that Ms. T had high levels of anxiety and depression as a result of her facial droop.

Ms. T was examined by her neurologist on March 21, 2014.²⁰ Her neurologist wrote as follows regarding the possible causes of Ms. T' facial droop:

[Ms. T] and I had a discussion about potential etiologies for her bilateral facial weakness. Recurrent idiopathic Bell's palsy is rare, occurring in only approximately 7% of patients, and search for underlying etiology for her facial weakness is indicated. Nevertheless as Bell's palsy can be recurrent [I] will go ahead and initiate treatment with steroids and antivirals. [Differential diagnoses] for bilateral facial weakness can include autoimmune (sarcoid, Wegner's, other autoimmune), infectious (lyme, herpes zoster, HIV, TB), amyloid, leukemia / lymphoma [T]he time course of right facial weakness developing several months after left facial weakness is not suggestive of GBS. She does have evidence of fibromuscular dysplasia on her prior CT angiogram and this can occur with autoimmune disorders, as can bilateral CN VII palsies

Ms. T was examined again by her neurologist on April 24, 2014.²¹ Her neurologist wrote in her report of the examination as follows:

Extra-ocular movements are intact, with no nystagmus, eye closure 50% right and 80% left. She has a right facial droop with no movement of the upper or lower face. On the left she is able to smile but movement is not full and she has no movement in the forehead on the left. Facial sensation intact and symmetrical bilaterally

Ms. T has had a number of lab tests done in an effort to diagnose her ailment.²² These have included an ANA, CBC, CMP, CXR, RF, RPR, SPEP, MG panel, and Coagulation panel. As recently as October 2013 Ms. T was taking acetaminophen, azithromycin, cyclobenzaprine, diphenhydramine Hcl, hydrochlorothiazide, hydrocodone, hyoscyamine sulfate, Valsartan, and

¹⁷ All factual findings in this paragraph are based on Exs. 2.67 - 2.68 unless otherwise stated.

¹⁸ Ex. 2.81.

¹⁹ All factual findings in this paragraph are based on Ex. 2.64 unless otherwise stated.

²⁰ All factual findings in this paragraph are based on Exs. A13 and B8 unless otherwise stated.

²¹ All factual findings in this paragraph are based on Exs. A7 and B14 unless otherwise stated.

²² All factual findings in this paragraph are based on Exs. A5, A11, A14, B6, and B12 unless otherwise stated.

zolpidem tartrate.²³ As of April 2014 Ms. T' medications included aspirin, Ativan, ibuprofen, Levothyroxine sodium, Lisinopril, and Pravastatin. Ms. T continues to have difficulty speaking and chewing, and she cannot close her right eye.²⁴

On February 11, 2014 Ms. T completed the Division's *Disability and Vocational Report* form.²⁵ Ms. T reported that she can speak and write in English that she graduated from high school (has a 12th grade education), and that she attended a Travel Academy in 2005. She also reported that her employment over the past 15 years has been primarily as a truck driver, shuttle-bus driver, delivery driver, and dispatcher.²⁶

On February 21, 2014 Dr. Isakson performed Ms. T' preliminary examination for Interim Assistance and completed the Division's Form AD-2.²⁷ Dr. Isakson reported Ms. T' primary diagnoses as a CVA / stroke. Dr. Isakson also reported that Ms. T was not expected to recover from her condition.

B. Relevant Procedural History

Ms. T applied to the Social Security Administration (SSA) for Supplemental Security Income (SSI) on February 11, 2014.²⁸ Ms. T applied to DPA for Interim Assistance on March 13, 2014.²⁹ On April 8, 2014 the Division denied Ms. T' application based on its finding that her medical condition did not appear to satisfy the Adult Public Assistance program or Social Security Administration's disability criteria.³⁰ Ms. T requested a hearing on April 21, 2014.³¹

Ms. T' hearing was held on May 8, 2014. Ms. T attended the hearing, represented herself, and testified on her own behalf. Ms. T' lay advocate, F B, also attended the hearing, assisted Ms. T, and testified on her behalf. Public Assistance Analyst Terri Gagne participated in the hearing by phone and represented the Division. Jamie Lang, a disability adjudicator with the Division, participated by phone and testified on behalf of the Division. After the hearing the record was left open for post-hearing filings. The record closed on June 6, 2014.

²³ Ex. 2.8.

²⁴ Ex. A5.

²⁵ All factual findings in this paragraph are based on Exs. 2.91 - 2.96 unless otherwise stated.

²⁶ Exs. 2.93, 2.94.

²⁷ All factual findings in this paragraph are based on Exs. 2.84, 2.85, 2.87, and 2.88 unless otherwise stated.

²⁸ Ex. 2.0.

²⁹ Exs. 1, A1.

³⁰ Ex. 3.

³¹ Ex. 4.

III. Discussion

A. *The Three-Step Interim Assistance Disability Determination Process*

The Alaska Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”³² Applicants who are under the age of 65 years are required to apply to the Social Security Administration (SSA) and qualify for Supplemental Security Income (SSI) as a prerequisite to receiving Adult Public Assistance benefits.³³ Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.³⁴

Interim Assistance is a monthly payment in the amount of \$280.00 provided to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income applications.³⁵ In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”³⁶ An Interim Assistance applicant has the burden of proving, by a preponderance of the evidence, that he or she is likely to be found disabled by the SSA.³⁷

The SSA uses a five-step evaluation process in making its disability determinations.³⁸ Each step is considered in order, and if the SSA finds the applicant not to be disabled at steps one, two, or four, it does not consider subsequent steps.³⁹

The Division uses the first three steps of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.⁴⁰ The first step looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the applicant is not disabled.⁴¹ If the applicant is not performing “substantial gainful activity,” it is necessary to proceed to step two.

³² AS 47.25.430.

³³ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the Supplemental Security Income standards are not required to apply for Supplemental Security Income benefits. 7 AAC 40.170(a).

³⁴ 7 AAC 40.030(a); 7 AAC 40.170(a).

³⁵ 7 AAC 40.170(a) and (b); AS 47.25.455.

³⁶ 7 AAC 40.180(b)(1).

³⁷ See 2 AAC 64.290(e) and 7 AAC 49.135; see also *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985) (the party who is seeking a change in the status quo bears the burden of proof); *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986) (the standard of proof in an administrative proceeding, unless otherwise specified, is the preponderance of the evidence standard).

³⁸ 20 C.F.R. § 416.920.

³⁹ 20 C.F.R. § 416.920(a)(4).

⁴⁰ See *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012). This decision was reversed by an Anchorage Superior Court judge in 2013. However, the Superior Court’s legal analysis is not binding on the Division except in that particular case, and the Division has appealed the Superior Court’s decision to the Alaska Supreme Court.

⁴¹ 20 C.F.R. § 416.920(a)(4)(i).

The second step requires the evaluation of 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.⁴² In order to be considered disabled, the impairment or combination of impairments must be severe,⁴³ and must be expected to result in death or must have lasted or be expected to last at least 12 months.⁴⁴ 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 requirement, then it is necessary to proceed to step three.

The third step requires an evaluation of whether the impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the Social Security Administration.⁴⁵ If it does, the applicant is disabled⁴⁶ and qualifies for Interim Assistance. If the applicant's impairment does not meet or equal one of the SSA Listings, the applicant does not qualify for Interim Assistance.⁴⁷

B. Standard of Review

At the hearing stage of the proceedings, the agency is still in the process of applying its expertise and reaching its final decision. During this internal appeal process, the Administrative Law Judge who issues the proposed decision, and the Commissioner who will make the final decision, may independently weigh the evidence and reach a different conclusion than the Division staff. This is the case even if the original decision is factually supported and has a reasonable basis in the law. While the Commissioner may *choose* to give weight to the judgments and policy directions proposed by his staff, as the department's chief executive he is never *obliged* to do so.⁴⁸ Moreover, evidence was received at hearing that was not originally available to the Division's medical reviewer. Accordingly, no deference will be given to factual determinations made by the Division prior to hearing.

C. Application of the Interim Assistance Criteria to This Case

1. Step 1 - Is the Applicant Engaged in Substantial Gainful Activity?

⁴² 20 C.F.R. § 416.908.

⁴³ 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).

⁴⁴ 20 C.F.R. § 416.909; 20 C.F.R. § 416.920(a)(4)(ii).

⁴⁵ See 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

⁴⁶ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

⁴⁷ See *In Re M.H.*, OAH Case No. 12-0688-APA.

⁴⁸ See, e.g., *In re Alaska Medical Development – Fairbanks, LLC*, OAH No. 06-0744-DHS, Decision & Order at 5-6 & n.70 (issued April 18, 2007; adopted by Commissioner of Health & Social Services in relevant part, Decision After Remand, Oct. 9, 2007) (<http://aws.state.ak.us/officeofadminhearings/Documents/DHS/DHS060744.pdf>); *In re Rockstad*, OAH No. 08-0282-DEC, Decision & Order at 5 (Commissioner of Environmental Conservation, adopted Nov. 17, 2008) (<http://aws.state.ak.us/officeofadminhearings/Documents/DEC/DEC080282.pdf>).

The first step of the disability analysis asks whether the applicant is performing "any substantial gainful activity."⁴⁹ Ms. T testified that she is not currently working, and the Division did not dispute this.⁵⁰ Accordingly, Ms. T has proven that she is not engaged in substantial gainful activity, and has satisfied Step 1 of the three-step Interim Assistance analysis.

2. Step 2 - Are the Severity and Durational Requirements Satisfied?

a. Severity

At step two of the sequential evaluation process, the adjudicator must determine which of the applicant's impairments, if any, are "severe."⁵¹ Impairment should be found to be "non-severe" only when the evidence establishes a "slight abnormality" that has "no more than a minimal effect" on an individual's ability to work.⁵² The inquiry at Step 2 is "a de minimis screening device to dispose of groundless claims."⁵³ If an adjudicator is unable to clearly determine the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation should not end with the Step 2 "severity" evaluation.⁵⁴ Further, even if no single impairment is found to be severe under this lenient standard, each impairment still must be considered in combination with all other impairments to determine whether the combined effect of multiple impairments is medically severe.⁵⁵ The Division found that Ms. T' neurological impairment, whether due to Bell's palsy or stroke, is "medically severe" as defined by the applicable regulations.⁵⁶ Accordingly, Ms. T' impairments satisfy the first half of Step 2 of the disability analysis.

b. Duration

The next step, pursuant to 20 C.F.R. 416.909, is to decide whether or not Ms. T' impairments have lasted, or can be expected to last, for a continuous period of at least 12 months.

⁴⁹ 20 C.F.R. § 416.972 defines "substantial gainful activity" as work that (a) involves doing significant and productive physical or mental duties, and (b) is done (or intended) for pay or profit.

⁵⁰ Ex. 2.0(a); L T hearing testimony; Jamie Lang hearing testimony.

⁵¹ 20 C.F.R. § 404.1521.

⁵² *Social Security Ruling (SSR) 85-28*, 1985 WL 56856 at 3 (SSA 1985); *see also Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988); *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2006); *Kirby v. Astrue*, 500 F.3d 705, 707-08 (8th Cir. 2007); 20 C.F.R. §§ 404.1521(a), 416.921(a).

⁵³ *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 (1987)).

⁵⁴ SSR 85-28.

⁵⁵ 20 C.F.R. § 404.1523 states:

In determining whether your physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, we will consider the combined effect of all of your impairments without regard to whether any such impairment, if considered separately, would be of sufficient severity. If we do find a medically severe combination of impairments, the combined impact of the impairments will be considered throughout the disability determination process.

⁵⁶ Ex. 2.0(c); Jamie Lang hearing testimony.

In this regard, it is important to note that the 12 month duration requirement of 20 C.F.R. 416.909 is retrospective as well as prospective; it looks back in time as well as forward in time (i.e. the impairment "must have lasted or must be expected to last").

The Division found that Ms. T' neurological impairments did not yet satisfy the 12 month durational requirement because, as of the date the Division denied Ms. T' application (April 8, 2014), Ms. T' impairment had lasted less than five months.⁵⁷ However, Dr. Isakson reported on the Division's Form AD-2 that Ms. T' neurological problems were expected to last for more than 12 months; he wrote that Ms. T was not expected to recover from her condition, meaning that the condition was expected to continue indefinitely.⁵⁸ Accordingly, the medical evidence confirms that Ms. T' impairments satisfy the 12 month durational requirement. Ms. T therefore satisfies the second half of Step 2 of the disability analysis.

3. Step 3 - Whether the Applicant "Meets the Listing"

The final step of the Interim Assistance program's disability analysis is to determine whether an applicant's impairments meet or equal the criteria of the "Listing of Impairments" contained in the SSA's regulations at 20 C.F.R. Part 404, Subpart P, Appendix 1 ("the Listings"). The applicant bears the burden of establishing that his or her impairment satisfies the requirements of a "Listings" impairment.⁵⁹ To meet a Listing, an impairment must meet *all* of the Listing's specified criteria; an impairment that manifests only some of these criteria, no matter how severely, does not qualify.⁶⁰

The record indicates that Ms. T has seven basic types of impairments. These are (1) her neurological impairments (Bell's palsy and/or stroke), (2) her gastrointestinal impairments (gastroesophageal reflux disease or GERD, irritable bowel syndrome or IBS, and colitis), (3) her cardiovascular impairments (hyperlipidemia and hypertension), (4) her thyroid disease, (5) her migraine headaches, (6) her depression, and (7) her anxiety.⁶¹ The Social Security Administration has different criteria for each of these impairments. Thus, each of the seven impairments must be analyzed separately.

a. Ms. T' Neurological Impairments (Bell's Palsy and/or Stroke)

⁵⁷ Ex. 2.0(d); Jamie Lang hearing testimony.

⁵⁸ Exs. 2.84, 2.85, 2.87, and 2.88.

⁵⁹ *Tackett v. Apfel*, 180 F.3d 1094, 1098-1099 (9th Cir.1999); *Sullivan v. Zebley*, 493 U.S. 521, 530-531, 110 S.Ct. 885, 107 L.Ed.2d 967 (1990).

⁶⁰ *Sullivan, supra*, 493 U.S. at 530.

⁶¹ See Section II(A) at pages 1-2, above.

The Social Security disability system classifies palsies and strokes under the Neurological System Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 11.00 *et. seq.* Strokes are classified under § 11.04 (central nervous system vascular accident),⁶² which requires in relevant part as follows:

11.04 Central nervous system vascular accident. With one of the following more than 3 months post-vascular accident: (A) sensory or motor aphasia resulting in ineffective speech or communication; or (B) significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

It was clear at hearing that Ms. T had facial droop and that this caused her to slur her words somewhat when speaking. However, she was still able to make herself understood, so she does not satisfy the "ineffective speech or communication" requirement under § 11.04(A). Also, while Ms. T' medical records indicate that she has some muscle weakness, as a result of her neurological problems, the degree of weakness is not so severe as to cause a sustained disturbance of her gross and dexterous movements or her gait and station. Thus, Ms. T' neurological problems are not severe enough to satisfy the requirements of § 11.04(B).

SSA classifies palsies under § 11.07,⁶³ which requires in relevant part as follows:

(A) IQ of 70 or less; or (B) abnormal behavior patterns, such as destructiveness or emotional instability; or (C) significant interference in communication due to speech, hearing, or visual defect; or (D) disorganization of motor function as described in 11.04B.

In this case, there is no evidence that Ms. T' neurological problems have affected her intelligence or caused any behavioral problems, so § 11.07(A) and § 11.07(B) are not satisfied. Further, while her facial droop has certainly caused some difficulty speaking, and while Ms. T has some muscle weakness, these problems are not currently severe enough to satisfy § 11.07(C) or § 11.07(D). Accordingly, Ms. T cannot currently be found to be disabled on the basis of her neurological problems. It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

⁶² See *Cook v. Barnhart*, 62 Fed. Appx. 290 (10th Cir. 2003) (stroke-related impairments analyzed under Listing 11.04); see also *Bellamy v. Astrue*, 2010 WL 2025489 (W.D.N.Y. 2010); *Imbo v. Astrue*, 2011 WL 3839676 (N.D. Ill. 2011); *Orostica v. Commissioner of Social Security Administration*, 2012 WL 4356263 (M. D. Fla. 2012); *Gassaway v. Colvin*, 2013 WL 2389894 (E.D. Va. 2013); and *Brasher-Lee v. Colvin*, 2013 WL 5348558 (S. D. Ind. 2013).

⁶³ See *Brascher v. Astrue*, 2011 WL 1637029 (E.D. Va. 2011) (palsy analyzed under Listing 11.07); *Kuhn v. Astrue*, 2012 WL 3960193 (D. Idaho 2012); *Washington v. Astrue*, 2013 WL 1787180 (E.D. La. 2013); *McCutchen v. Colvin*, 2013 WL 4046335 (D. Or. 2013); *Sherk v. Colvin*, 2014 WL 2197933 (S. D. Ill. 2014); *Pressley v. Astrue*, 2014 WL 2456804 (N.D. Ga. 2014).

b. Ms. T' Gastrointestinal Impairments

Ms. T has three gastrointestinal system-related impairments - gastroesophageal reflux disease (GERD), irritable bowel syndrome (IBS), and colitis. The Social Security disability system classifies gastrointestinal problems under its Gastrointestinal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, §5.00 *et. seq.* SSA has no specific listing for GERD, IBS, or colitis. The closest listing is SSA's listing for inflammatory bowel disease (IBD), set forth at Listing § 5.06, which states as follows:

5.06 Inflammatory bowel disease (IBD) documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period; OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or

2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or

3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or

5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or

6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

The medical evidence in the record is insufficient to show that Ms. T' GERD, IBS, or colitis are severe enough to satisfy either the "A" or "B" criteria of Listing §5.06 (see Section II(A),

above). It is therefore necessary to determine whether any of Ms. T' other impairments satisfy the requirements of a relevant SSA Listing.

c. Ms. T' Cardiovascular System Problems

Ms. T has two cardiovascular system-related impairments - hypertension and hyperlipidemia. The Social Security disability system classifies cardiovascular problems under its Cardiovascular Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 4.00 *et. seq.*

The specific SSA Listing which applies to Ms. T' hypertension is § 4.00(H)(1). That Listing states in relevant part that, "[b]ecause hypertension (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings." In this case there has been no assertion that Ms. T' hypertension has had a debilitating effect on any specific organs or systems (other than her neurological system, which has already been discussed above). Independent review of Ms. T' medical records likewise fails to disclose a connection between Ms. T' hypertension and any specific debilitating effect. Her hypertension therefore does not satisfy the requirements of § 4.00(H)(1).

Hyperlipidemia (high cholesterol) does not have its own listing *per se*. However, high cholesterol ultimately leads to coronary artery disease. The SSA Listing for coronary artery disease is § 4.04(C), which provides as follows:

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing: (a) 50 percent or more narrowing of a nonbypassed left main coronary artery; or (b) 70 percent or more narrowing of another nonbypassed coronary artery; or (c) 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or (d) 50 percent or more narrowing of at least two nonbypassed coronary arteries; or (e) 70 percent or more narrowing of a bypass graft vessel; and
2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

The record in this case does not contain the angiographic evidence necessary to demonstrate coronary artery disease under Listing § 4.04(C)(1). It is therefore necessary to determine whether any of Ms. T' other impairments satisfy the requirements of a relevant SSA Listing.

d. Ms. T' Thyroid Disease

The Social Security disability system classifies thyroid problems under its Endocrine System Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 9.00 *et. seq.* The Listings under Section 9.00 related to thyroid problems have the following requirements:

9.02 Thyroid Disorders. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 Hyperparathyroidism. With: (A) generalized decalcification of bone on appropriate medically acceptable imaging study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or (B) a resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 Hypoparathyroidism. With: (A) severe recurrent tetany; or (B) recurrent generalized convulsions; or (C) lenticular cataracts. Evaluate under the criteria in 2.00ff.

There is no medical evidence in the record to meet the criteria of Listings 9.02, 9.03, or 9.04. Accordingly, Ms. T cannot be found to be disabled based on her thyroid disease at this time. It is therefore necessary to determine whether any Ms. T' other impairments satisfy the requirements of a relevant SSA Listing.

e. Ms. T' Headaches

The Social Security Administration has not yet officially classified headaches under a particular listing.⁶⁴ However, several federal district court cases indicate that SSA Listing Section 11.03 is an appropriate listing under which to analyze headaches. SSA Question and Answer (“Q & A”) document 09–036 is the SSA's current guidance for determining whether headaches are a medically determinable impairment.⁶⁵ The Q & A document 09-036 describes the essential components of Listing 11.03, as those components apply to headaches, as a typical headache event pattern that is documented by detailed descriptions, including all associated phenomena (e.g., premonitory symptoms, aura, duration, intensity, treatment), that occurs more frequently than once weekly with alteration of awareness or an effect that significantly interferes with activity during the day (e.g., need for a darkened quiet room, lying down without moving, or sleep disturbance that impacts daytime activities). Although Ms. T' medical records indicate that she has had significant headaches since November 2013, the medical evidence fails to demonstrate that the severity of Ms.

⁶⁴ This has been confirmed in several federal district court decisions, including *Miller v. Astrue*, 2011 WL 671752 (D. Ariz. 2011); *Tonsor v. Commissioner of Social Sec.*, 2011 WL 1231602 (C.D. Ill. 2011); *Watts v. Astrue*, 2012 WL 3150369 (C.D. Ill. 2012); and *Romonosky v. Colvin*, 2013 WL 4052921 (W.D. Pa. 2013).

⁶⁵ The SSA document is quoted in *Miller v. Astrue*, 2011 WL 671752 (D. Ariz. 2011).

T' symptoms are sufficient to satisfy the criteria of SSA document 09–036. Accordingly, Ms. T cannot currently be found to be disabled on the basis of her headaches. It is therefore necessary to determine whether any of Ms. T' other impairments satisfy the requirements of a relevant SSA Listing.

f. Ms. T' Depression

The Social Security disability system classifies Ms. T' depression under its Listing for "Affective Disorders" at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.04:

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. Depressive syndrome characterized by at least four of the following: (a) anhedonia or pervasive loss of interest in almost all activities; or (b) appetite disturbance with change in weight; or (c) sleep disturbance; or (d) psychomotor agitation or retardation; or (e) decreased energy; or (f) feelings of guilt or worthlessness; or (g) difficulty concentrating or thinking; or (h) thoughts of suicide; or (i) hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following: (a) hyperactivity; or (b) pressure of speech; or (c) flight of ideas; or (d) inflated self-esteem; or (e) decreased need for sleep; or (f) easy distractibility; or (g) involvement in activities that have a high probability of painful consequences which are not recognized; or (h) hallucinations, delusions or paranoid thinking; or
3. Bipolar syndrome, with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes); AND

B. Resulting in at least two of the following: (1) marked restriction of activities of daily living; or (2) marked difficulties in maintaining social functioning; or (3) marked difficulties in maintaining concentration, persistence, or pace; or (4) repeated episodes of decompensation, each of extended duration; OR

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

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

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

The record indicates that Ms. T meets four of the criteria under § 12.04(A)(1). However, Ms. T does not satisfy any of the required criteria of § 12.04(B) or § 12.04(C). Accordingly, Ms. T cannot currently be found to be disabled based on her depression. It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

g. Ms. T' Anxiety

SSA classifies anxiety under its Listing for anxiety-related disorders at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.06. In order to meet or equal the criteria of listing § 12.06, Ms. T must satisfy the following test:

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

A. Medically documented findings of at least 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 (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 panic 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.

There can be little doubt that Ms. T has anxiety as a result of the neurological problems she has experienced since November 2013. However, the medical evidence in the record is insufficient to show that Ms. T satisfies the required criteria of § 12.06(A), § 12.06(B), or § 12.06(C). Accordingly, Ms. T cannot currently be found to be disabled based on her anxiety.

IV. Conclusion

Ms. T is unemployed, she suffers from several severe impairments, and those impairments satisfy the 12 month durational requirement. However, although Ms. T' impairments are significant, they do not currently satisfy the specific criteria of any SSA "Listing." As an applicant for Interim Assistance, Ms. T has the burden of proving, by a preponderance of the evidence, that she is likely to be found disabled by SSA. The preponderance of the evidence demonstrates that Ms. T does not satisfy step three of the SSA disability determination process (*i.e.* that one or more of her impairments meets or equals an SSA Listing). Accordingly, the Division correctly determined that Ms. T is not currently eligible for Interim Assistance. The Division's decision denying Ms. T's application for Interim Assistance is therefore affirmed.⁶⁶

DATED this 10th day of July, 2014.

Signed _____
Jay D. Durych
Administrative Law Judge

Adoption

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

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

DATED this 21st day of July, 2014.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge, DOA/OAH

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

⁶⁶ Should Ms. T' condition deteriorate, or should she obtain additional medical evidence showing that one of her impairments satisfies a Social Security "Listing," she may reapply for Interim Assistance at any time.