

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

In the Matter of: )  
 )  
 X Y ) OAH No. 14-0643-APA  
 ) DPA Case No.  
 )  
\_\_\_\_\_)

**DECISION**

**I. Introduction**

The issue in this case is whether X Y satisfies the Interim Assistance program's disability criteria. The Division of Public Assistance (Division) concluded that although Ms. Y is not working, although her impairments are medically severe, and although her impairments have lasted long enough to satisfy the 12 month durational requirement, they do not satisfy the specific criteria of the Social Security Administration's (SSA's) applicable impairment "Listings."<sup>1</sup> Accordingly, the Division denied Ms. Y's application for Interim Assistance.<sup>2</sup>

This decision concludes that Ms. Y is not working, that she suffers from several severe impairments, and that these impairments satisfy the 12 month durational requirement. However, Ms. Y's impairments do not currently satisfy the specific criteria of any of SSA's applicable impairment "Listings." As a result, Ms. Y does not satisfy the Interim Assistance program's eligibility requirements.<sup>3</sup> The Division's decision denying Ms. Y's application for Interim Assistance is therefore affirmed.

**II. Facts**

**A. Ms. Y's Medical Condition and Impairments per her Medical Records**

Ms. Y is 46 years old.<sup>4</sup> She was born in Texas but has lived in No Name on and off since she was in sixth grade.<sup>5</sup> She had substance abuse issues involving alcohol, cocaine, and pain medications prior to 2011, but has been clean and sober for the last three years.<sup>6</sup> Her current diagnoses include generalized anxiety disorder, bipolar disorder, depression, borderline personality

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<sup>1</sup> Exs 5.0 - 5.7; Jamie Lang hearing testimony.

<sup>2</sup> Ex. 4.

<sup>3</sup> Since the decision in *In re M.H.*, OAH No. 12-0688-APA (Commissioner of Health and Social Services 2012), it is typically more difficult for an applicant to qualify for Alaska's Interim Assistance program than it is for the same applicant to qualify for Supplemental Security Income (SSI) with the SSA, (although the process of qualifying for SSI takes longer). Accordingly, an applicant should not assume he or she will fail to qualify for SSI simply because the applicant fails to qualify for Interim Assistance.

<sup>4</sup> Ex. 1.

<sup>5</sup> Ex. 3.35.

<sup>6</sup> Ex. 3.35.

disorder, post-traumatic stress disorder (PTSD), asthma, chronic pain syndrome, gastroesophageal reflux disease (GERD), hypercholesterolemia, hypertension, interstitial cystitis, irritable bowel syndrome, leg abnormality with gait pain, left leg pain, right leg pain, left rotator cuff tear with chronic pain in left shoulder, acromioclavicular (AC) arthritis, low back pain / lumbago, morbid obesity, and post-concussion syndrome.<sup>7</sup> Ms. Y's recent prescription medications include an albuterol inhaler, biotin, cetirizine, citalopram, hydroxyzine HCL, and tramadol.<sup>8</sup>

Ms. Y was admitted to No Name Hospital for psychiatric problems while in her teens and again in 1999.<sup>9</sup> She was seen at Providence Alaska Medical Center (PAMC) for back pain on February 24, 2004, at which time x-rays showed "minimal degenerative changes" of the lumbar spine.<sup>10</sup>

On August 1, 2004 Ms. Y presented to PAMC with depression and suicidal ideation.<sup>11</sup> At that time she stated that she had been using cocaine for approximately 10 years. She was diagnosed with chronic substance abuse, substance abuse-related mood disorder, and suicidal ideation, and was held overnight for observation.

On October 6, 2004 Ms. Y presented to PAMC again with suicidal ideation.<sup>12</sup> She was diagnosed with chronic cocaine abuse and substance abuse-related mood disorder and was discharged to an inpatient drug treatment facility.

On December 16, 2004 Ms. Y tripped, fell, and hurt her left hand and shoulder.<sup>13</sup> X-rays revealed no fracture or dislocation, and she was released with a splint and pain medications.

Ms. Y has had pain in her left shoulder since 2005.<sup>14</sup> A 2006 MRI of Ms. Y's left acromioclavicular joint showed arthritic changes producing mild impingement on the supraspinatus muscle, but no rotator cuff tear.<sup>15</sup> Her left shoulder pain has been treated with periodic steroid injections which help for few months.<sup>16</sup>

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<sup>7</sup> Exs. 3.7, 3.8, 3.17, and 3.41.

<sup>8</sup> Exs. A1 - A6, A12.

<sup>9</sup> Ex. A104.

<sup>10</sup> Exs. A107, A108.

<sup>11</sup> All factual findings in this paragraph are based on Exs. A102 - A105 unless otherwise stated.

<sup>12</sup> All factual findings in this paragraph are based on Ex. A101 unless otherwise stated.

<sup>13</sup> All factual findings in this paragraph are based on Exs. A98 - A100 unless otherwise stated.

<sup>14</sup> Ex. 3.116.

<sup>15</sup> All factual findings in this paragraph are based on Ex. 3.87 unless otherwise stated.

<sup>16</sup> See, for example, Ex. 3.127.

On May 20, 2008 Ms. Y fell and hurt her right ankle.<sup>17</sup> X-rays showed a small avulsion fracture of the right lateral calcaneas. This was a non-operable fracture and so Ms. Y was provided with a splint, crutches, and pain medications to use until healed.

On November 19, 2009 Ms. Y was admitted to the hospital for a closed fracture of the distal ends of her right tibia and fibula.<sup>18</sup> The fracture was surgically repaired and a metal plate was installed, the post-operative notes stated that there were no complications, and Ms. Y was discharged home on November 22, 2009.<sup>19</sup> While in the hospital for her ankle repair, Ms. Y's chest was x-rayed; radiology report states "stable chest radiograph without acute findings."<sup>20</sup>

On December 13, 2011 Ms. Y was assessed by a physical therapist and found to have a limited gait; she was placed on aquatic therapies to improve her range of motion, body mobility, and strength.<sup>21</sup>

On March 16, 2012 Ms. Y was examined for hearing loss.<sup>22</sup> The hearing specialist found that Ms. Y's "hearing sensitivity is basically mild sensorineural hearing loss, AU."

A medical report dated January 10, 2013 states that Ms. Y had been seen numerous times in hospital psychiatric emergency rooms and at that time had a distant past history of admission to No Name (NN) and two suicide attempts.<sup>23</sup> On that date she was seen at PAMC complaining of pain and mental health issues; she was given pain medications and was discharged.<sup>24</sup>

On January 11, 2013 Ms. Y was seen at PAMC complaining of leg pain, difficulty sleeping, itching, and mental health issues.<sup>25</sup> She was given tramadol for pain and a consultation regarding her mental health issues.

On March 15, 2013 Ms. Y complained to her doctor about right hip and thigh pain.<sup>26</sup> Ms. Y's right hip was x-rayed on March 23, 2013; the radiologist found early degenerative changes, but no fracture or dislocation, and the soft tissues were within normal limits.<sup>27</sup>

On April 25, 2013 Ms. Y visited the No Name Neighborhood Health Clinic (NNNHC) and requested a letter stating she is disabled.<sup>28</sup> The notes from that visit state in relevant part:<sup>29</sup>

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<sup>17</sup> All factual findings in this paragraph are based on Exs. A95 - A97 unless otherwise stated.

<sup>18</sup> Exs. 3.108, A83 - A94.

<sup>19</sup> Exs. 3.17, A83 - A94.

<sup>20</sup> Ex. A85.

<sup>21</sup> Exs. 3.85, 3.100.

<sup>22</sup> All factual findings in this paragraph are based on Ex. A17 unless otherwise stated.

<sup>23</sup> Ex. 3.45.

<sup>24</sup> Exs. A54 - A57.

<sup>25</sup> All factual findings in this paragraph are based on Exs. A27 - A30 unless otherwise stated.

<sup>26</sup> Ex. 3.118. On the same date she had a corticosteroid injection in her left shoulder (Ex. 3.120).

<sup>27</sup> Exs. 3.50, A82.

Patient presents requesting letter from NNNHC medical doctor in support of her request for public assistance due to her ongoing mental health problems. She has a long history of severe problems, and has been a patient at ANHC for years . . . . She is severely mentally disabled . . . and has been on meds and some therapy. She couldn't maintain sobriety "until meds were correct," now [she] has been clean more than two years. Her memory is affected; she has ongoing anxiety preventing her from coping well with routine stressors. [She] has not been able to hold a job due to mania, insomnia, fluctuating mood, impulsivity, poor financial decisions, [and] difficult relationships with family . . . . [I]t's unlikely she could keep steady, meaningful employment.

On April 29, 2013 Ms. Y requested that her doctor, Rebecca Clark, M.D., prepare a letter on her behalf stating that she was disabled.<sup>30</sup> Dr. Clark declined and wrote in her notes:<sup>31</sup>

Patient is overweight and is in pain but based on several office visits of observation and exam she is not what I would consider comfortable deeming disabled; she might not be able to lift patients as a PCA but she should be able to perform other tasks.

As of June 3, 2013 Ms. Y was wearing a splint on her right ankle to help with pain and support.<sup>32</sup> On the same date she received a steroid injection in her left shoulder.<sup>33</sup>

On September 13, 2013 mentioned to her doctor that she had previously been having nightmares and daydreams about being abused.<sup>34</sup>

On October 27, 2013 Ms. Y presented to Providence Hospital's emergency room, complaining of knee pain and seeking a wheelchair and a personal care assistant (PCA).<sup>35</sup> The treating physician's exam notes state that she found Ms. Y's statements to be inconsistent with the findings from the medical exam, and that the doctor believed Ms. Y might be malingering. An x-ray of Ms. Y's left knee taken the next day did not show any abnormalities.

For a period prior to January 20, 2014 Ms. Y was staying at a women's crisis shelter, but she was discharged from the shelter due to behavioral problems.<sup>36</sup> On January 20, 2014 Ms. Y presented to Providence Hospital's psychiatric emergency room, claiming that she was suicidal and

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<sup>28</sup> All factual findings in this paragraph are based on Exs. 3.146 and 3.147 unless otherwise stated.

<sup>29</sup> The formatting of the notes has been revised for brevity. Because it could not be determined who authored these notes, and thus whether they have professional credentials, or the length of their treatment relationship with Ms. Y, the evidentiary value of these notes has been discounted in this decision.

<sup>30</sup> Ex. 3.116.

<sup>31</sup> Ex. 3.116.

<sup>32</sup> Ex. 3.112.

<sup>33</sup> Ex. 3.112.

<sup>34</sup> Ex. 3.104.

<sup>35</sup> All factual findings in this paragraph are based on Exs. 3.58 - 3.59 and A57 - A60 unless otherwise stated.

<sup>36</sup> Ex. 3.30.

that if "she was suicidal they had no alternative but to keep her."<sup>37</sup> She was then admitted to NN, where she threatened to kill herself if discharged to the street. While at NN Ms. Y's ability to ambulate improved to the point where she was able to walk unassisted. However, NN subsequently determined that Ms. Y "did not meet clinical criteria for continued stay." NN attempted to discharge Ms. Y, but she resisted discharge and physically assaulted two staff members. She was discharged on February 3, 2014 and cited for assault.

A medical examination conducted on February 4, 2014 found that Ms. Y had a full range of motion, displayed a normal gait and station, and had a normal, upright, unguarded, tandem gait.<sup>38</sup>

On February 5, 2014 Ms. Y completed the Division's *Disability and Vocational Report* form.<sup>39</sup> Ms. Y wrote that, over the past 15 years, she had worked at the No Name.

On February 6, 2014 Dr. Phillip Hess, M.D. performed Ms. Y's preliminary examination for Interim Assistance and completed the Division's Form AD-2.<sup>40</sup> Dr. Hess reported Ms. Y's primary diagnoses as bipolar disorder. Dr. Hess wrote that Ms. Y was not expected to recover from her bipolar disorder, but that she "should stabilize with appropriate medical and psychological treatment" and that her bipolar disorder "should not create long term disability." On February 11, 2014 Kathy Chastain, A.N.P. performed a second preliminary examination for Interim Assistance and completed the Division's Form AD-2.<sup>41</sup> Ms. Chastain reported Ms. Y's primary diagnosis as major depression. Ms. Chastain wrote that Ms. Y was expected to recover from her depression within three months, and that her condition should "stabilize on medications." Also on February 11, 2014 a third health care provider, whose signature is not legible, performed a third preliminary examination for Interim Assistance and completed the Division's Form AD-2.<sup>42</sup> The physician wrote that Ms. Y's diagnoses were depression, chronic pain syndrome, and morbid obesity. The physician also wrote that Ms. Y was expected to recover from these conditions, but that this would take a year or longer.

On the same date Ms. Y's last two AD-2s were completed, Ms. Y was seen at PAMC complaining of chronic left shoulder pain and seeking bariatric surgery.<sup>43</sup> Ms. Y was referred to an

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<sup>37</sup> All factual findings in this paragraph are based on Exs. 3.15 - 3.26, A34 - A46, and A61 - A64 unless otherwise stated.

<sup>38</sup> Ex. 3.37.

<sup>39</sup> All factual findings in this paragraph are based on Exs. 3.163 - 3.171 unless otherwise stated.

<sup>40</sup> All factual findings in this paragraph are based on Exs. 3.156, 3.157, 3.177, and 3.178 unless otherwise stated.

<sup>41</sup> All factual findings in this paragraph are based on Exs. 3.179 and 3.180 unless otherwise stated.

<sup>42</sup> All factual findings in this paragraph are based on Exs. 3.175 and 3.176 unless otherwise stated.

<sup>43</sup> All factual findings in this paragraph are based on Exs A10 - A13 unless otherwise stated.

orthopedic surgeon regarding her shoulder pain, and for a sleep study to confirm or rule-out obstructive sleep apnea.

On February 25, 2014 Ms. Y presented to PAMC complaining of chest pain and suicidal ideation.<sup>44</sup> The treating physician diagnosed her as malingering and discharged her with over-the-counter pain medications.

On March 11, 2014 Ms. Y presented to PAMC complaining of aggressive thoughts.<sup>45</sup> She was held overnight for observation and released the next day. During her stay at PAMC Ms. Y stated that she was hopeful that she would obtain employment as a receptionist.<sup>46</sup>

On March 18, 2014 Ms. Y presented to PAMC complaining of back pain.<sup>47</sup> She was given pain medications and released.

On May 2, 2014 Ms. Y presented to PAMC complaining of right ankle pain.<sup>48</sup> An x-ray was taken of her ankle which showed old healed fractures, an intact ankle mortise, and no acute bony changes. She was given two injections and pain medications and was then released.

Exam notes by Dr. Hess dated May 6, 2014 state that, as of that date, Ms. Y's mental health was "relatively stable on her current medications."<sup>49</sup>

### ***B. Ms. Y's Education and Work History***

Ms. Y can speak and write in English and is only a few classes away from earning a bachelor's degree.<sup>50</sup> Over the past 15 years she had worked at the No Name College, No Name, the No Name Center, and No Name's restaurant. She performed clerical work at the No Name but had to quit because, she says, it made her claustrophobic. While working at No Name she ran a cash register, cooked, put sandwiches together, and cleaned the premises. She testified, however, that she cannot do those things anymore because of her musculoskeletal problems. Ms. Y's last job was working as a counselor for the No Name in 2012.<sup>51</sup> Her past work in these positions would generally be classified as light work as opposed to sedentary work.<sup>52</sup>

### ***C. Ms. Y's Hearing Testimony***

At hearing Ms. Y testified in relevant part as follows:

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<sup>44</sup> All factual findings in this paragraph are based on Exs A33, A47 - A54, and A65 unless otherwise stated.

<sup>45</sup> All factual findings in this paragraph are based on Exs A31 - A32 and A66 - A75 unless otherwise stated.

<sup>46</sup> Ex. A71.

<sup>47</sup> All factual findings in this paragraph are based on Exs A75 - A78 unless otherwise stated.

<sup>48</sup> All factual findings in this paragraph are based on Exs A79 - A82 unless otherwise stated.

<sup>49</sup> Ex. A8.

<sup>50</sup> All factual findings in this paragraph are based on Ex. 5.5 and X Y's hearing testimony unless otherwise stated.

<sup>51</sup> Ex. 3.31; Ex. 5.5; X Y hearing testimony.

<sup>52</sup> Ex. 5.5.

1. She suffers from anxiety, depression, post-traumatic stress disorder (PTSD), and bipolar disorder. She has attempted to commit suicide twice via drug overdose.
2. She has moderate hearing loss and also vision loss due to Keratoconus.
3. She has carpal tunnel syndrome (CTS) in both her wrists which causes her to drop things. She is supposed to wear braces on her wrists for her CTS, but often she does not.
4. She has severe allergies and asthma.
5. She had a tear in her rotator cuff which was never medically treated.
6. She has back pain due to vertebral disc bulges.
7. Both her knees are weak and she is at high risk for falling because of this. She fell once in the street in front of Alaska Regional Hospital and was unable to get up.
8. She undergoes physical therapy for her legs. She cannot walk long distances or sit for long periods of time. She cannot ascend very many stairs. However, at her apartment there are only three steps, and she is able to manage those.
9. She uses a wheelchair and a cane. Two doctors have written her prescriptions for a wheelchair, and she has been fitted for an electric wheelchair.
10. She sometimes needs help to get into and out of the shower. She cannot reach down to her feet and so she has difficulty put on her socks and shoes. She is able to put on her shirts and pants. She can drive a vehicle and can sometimes go grocery shopping. Her son-in-law or one of his friends prepares her meals. She sometimes can wash dishes, but is generally not able to do other chores. Her son-in-law sometimes stays at her home and helps her.
11. She sometimes does not go outside due to her asthma, anxiety, and/or PTSD.
12. Her medications cause drowsiness which decrease her alertness and ability to work.

***D. Relevant Procedural History***

Ms. Y first applied for disability benefits in 2004.<sup>53</sup> She most recently applied for Supplemental Security Income (SSI) with SSA on June 26, 2012, her application was denied on July 9, 2012, she appealed, and she is currently awaiting a decision by the SSA.<sup>54</sup>

Ms. Y applied for Interim Assistance on January 27, 2014.<sup>55</sup> On March 11, 2014 the Division denied Ms. Y's application based on its finding that her medical condition did not appear

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<sup>53</sup> Ex. 3.69.

<sup>54</sup> Exs. 3.1, 5.

<sup>55</sup> Ex. 3.208.

to satisfy the Interim Assistance program's disability criteria.<sup>56</sup> Ms. Y requested a hearing on April 8, 2014.<sup>57</sup>

Ms. Y's hearing was held on May 15, 2014. Ms. Y attended the hearing in person, represented herself, and testified on her own behalf. Public Assistance Analyst Jeff Miller participated by phone and represented the Division. Jamie Lang, the Division's Interim Assistance reviewer, participated by phone and testified on behalf of the Division. After the hearing the record was left open for post-hearing filings through May 23, 2014, at which time the record closed.<sup>58</sup>

### 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].”<sup>59</sup> Applicants who are under the age of 65 years are required to apply to the Social Security Administration and qualify for Supplemental Security Income (SSI) as a prerequisite to receiving Adult Public Assistance benefits.<sup>60</sup> Once an applicant is approved for SSI, he or she is then eligible to receive Adult Public Assistance benefits.<sup>61</sup>

Interim Assistance is a monthly payment in the amount of \$280 provided to Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their Supplemental Security Income applications.<sup>62</sup> In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”<sup>63</sup> 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.<sup>64</sup>

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<sup>56</sup> Ex. 4.

<sup>57</sup> Ex. 3.4.

<sup>58</sup> Ms. Y submitted a four page filing on June 17, 2014. This filing was not considered because the hearing record was already closed. However, even had that filing been admitted into evidence, it would not have changed the result in this case because it essentially consisted of legal argument as opposed to substantive evidence of disability.

<sup>59</sup> AS 47.25.430.

<sup>60</sup> 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).

<sup>61</sup> 7 AAC 40.030(a); 7 AAC 40.170(a).

<sup>62</sup> 7 AAC 40.170(a) and (b); AS 47.25.455.

<sup>63</sup> 7 AAC 40.180(b)(1).

<sup>64</sup> 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).



The SSA uses a five-step evaluation process in making its disability determinations.<sup>65</sup> 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.<sup>66</sup>

The Division uses *the first three steps* of the SSA disability determination process in deciding whether an applicant qualifies for Interim Assistance.<sup>67</sup> The first step looks at the applicant's current work activity. If the applicant is performing "substantial gainful activity," the applicant is not disabled.<sup>68</sup> If the applicant is not performing "substantial gainful activity," it is necessary to proceed to step two.

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.<sup>69</sup> In order to be considered disabled, the impairment or combination of impairments must be severe,<sup>70</sup> and must be expected to result in death or must have lasted or be expected to last at least 12 months.<sup>71</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 requirement, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment satisfies certain impairment-specific criteria (known as "Listings") adopted by the SSA.<sup>72</sup> If it does, the applicant is disabled<sup>73</sup> 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.<sup>74</sup>

***B. Application of the Interim Assistance Criteria to This Case***

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<sup>65</sup> 20 C.F.R. § 416.920.

<sup>66</sup> 20 C.F.R. § 416.920(a)(4).

<sup>67</sup> *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.

<sup>68</sup> 20 C.F.R. § 416.920(a)(4)(i).

<sup>69</sup> 20 C.F.R. § 416.908.

<sup>70</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>71</sup> 20 C.F.R. § 416.909; 20 C.F.R. § 416.920(a)(4)(ii).

<sup>72</sup> *See* 20 C.F.R. Part 404, Subpart P, Appendix 1 (hereafter "Appendix 1").

<sup>73</sup> 20 C.F.R. § 416.920(a)(4)(iii) and (d).

<sup>74</sup> *See In Re M.H.*, OAH Case No. 12-0688-APA. This is the point at which the analysis in Alaska Interim Assistance program cases diverges from the analysis which SSA uses in SSI cases. In SSI cases, even if an applicant's impairment *does not* meet the criteria of a specific Listing at step three, the applicant can still qualify for benefits by showing that he or she cannot perform his or her prior work, and cannot perform sedentary work. *See* 20 C.F.R. § 416.920.

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

The first step of the disability analysis asks whether the applicant is performing “any substantial gainful activity.”<sup>75</sup> Ms. Y testified that he is not currently working, and the Division did not dispute this.<sup>76</sup> Accordingly, Ms. Y 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.”<sup>77</sup> An 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.<sup>78</sup> The inquiry at Step 2 is “a de minimis screening device to dispose of groundless claims.”<sup>79</sup> 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.<sup>80</sup> 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.<sup>81</sup> The Division found that Ms. Y's impairments are “severe” as defined by the applicable regulations.<sup>82</sup> Accordingly, Ms. Y's 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. Y's impairments have lasted, or can be expected to last, for a continuous period of at least 12 months.

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<sup>75</sup> 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.

<sup>76</sup> Ex. 5.5; X Y hearing testimony; Jamie Lang hearing testimony.

<sup>77</sup> 20 C.F.R. § 404.1521.

<sup>78</sup> *Social Security Ruling (SSR) 85-28*, 1985 WL 56856 at 3 (SSA 1985); *see also Yuckert v. Bowen*, 841 F.2d 303, 306 (9<sup>th</sup> Cir. 1988); *Webb v. Barnhart*, 433 F.3d 683, 686 (9<sup>th</sup> Cir. 2006); *Kirby v. Astrue*, 500 F.3d 705, 707–08 (8<sup>th</sup> Cir. 2007); 20 C.F.R. §§ 404.1521(a), 416.921(a).

<sup>79</sup> *Smolen*, 80 F.3d at 1290 (citing *Bowen v. Yuckert*, 482 U.S. 137 (1987)).

<sup>80</sup> SSR 85-28.

<sup>81</sup> 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.

<sup>82</sup> Ex. 5.5; 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 did not dispute that Ms. Y's impairments have lasted or are expected to last for 12 months or longer.<sup>83</sup> Ms. Y 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.<sup>84</sup> To satisfy 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.<sup>85</sup>

The record indicates that Ms. Y asserts 16 basic types of impairments. These are (1) back pain caused by spinal problems; (2) hip, knee, and ankle pain (lower extremity joint pain); (3) shoulder and wrist pain / carpal tunnel syndrome (upper extremity joint pain, (4) asthma; (5) digestive system problems (gastroesophageal reflux disease and irritable bowel syndrome); (6) cardiovascular problems (hypertension and hypercholesterolemia); (7) obesity; (8) chronic pain syndrome; (9) hearing loss; (10) vision loss; (11) affective disorder (includes depression and bipolar disorder); (12) anxiety-related disorders (includes anxiety and post-traumatic stress disorder (PTSD)); (13) personality disorder; and (14) neurological disorders (post-concussive syndrome).<sup>86</sup> The Social Security Administration has different criteria ("Listings") for each of these impairments. Accordingly, each of the impairments must be analyzed separately.

a. Ms. Y's Spinal Problems / Lumbago / Back Pain

The Social Security disability system classifies Ms. Y's spinal problems and attendant back pain under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 1.04. This Listing, titled "Disorders of the Spine," provides in relevant part:<sup>87</sup>

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<sup>83</sup> Ex. 5.5; Jamie Lang hearing testimony.

<sup>84</sup> *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).

<sup>85</sup> *Sullivan, supra*, 493 U.S. at 530.

<sup>86</sup> See Section II above at pages 1 - 2.

<sup>87</sup> Appendix 1, §1.04.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

With regard to Section 1.04A, the evidence in the record indicates that Ms. Y's spinal problems satisfy one of the criteria in this section because she may have some limitation of motion in her spine. However, there is no medical evidence of compromise of a nerve root, nerve root compression, muscle atrophy, reflex loss, or positive result on a straight-leg raising test. With regard to Section 1.04B, there is no medical evidence of spinal arachnoiditis. Finally, with regard to Section 1.04C, there is no evidence of lumbar spinal stenosis. Further, although Ms. Y's ability to walk is clearly impaired, under the SSA's regulations, the "inability to ambulate effectively" has very specific criteria, and is defined in relevant part as:<sup>88</sup>

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) *that limits the functioning of both upper extremities . . . .* [Emphasis added].

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living . . . . Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes . . . .

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<sup>88</sup> Appendix 1, §1.00(B)(2)(b).

Ms. Y's testimony regarding her difficulty walking was generally credible. However, Ms. Y's testimony and the medical records indicate that she can walk using one cane and sometimes walks without a cane; she does not need a walker, two crutches, or two canes. Accordingly, Ms. Y does not satisfy the specific criteria of Listing 1.04(C).<sup>89</sup>

In summary, Ms. Y's spinal problems, while no doubt bothersome, do not satisfy the specific criteria of SSA Listing Section 1.04. It is therefore necessary to determine whether one of her other impairments satisfies the requirements of a relevant SSA Listing.

b. Ms. Y's Hip, Knee, and Ankle Problems

The Social Security disability system classifies Ms. Y's hip, knee, and ankle joint pain under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 1.02A. Section 1.02A requires in relevant part as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With: (A) Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b . . . .

In this case, there is no question that Ms. Y's ankle and knee problems cause pain and limit her mobility to some degree. However, there is no evidence in the medical records of gross anatomical deformity, joint space narrowing, or bony destruction. In addition, the preponderance of the evidence indicates that Ms. Y is able to walk with a single cane, and thus fails to meet the stringent "inability to ambulate" requirements of Listing Section 1.00(B)(2)(b).<sup>90</sup> In summary, Ms. Y's lower extremity joint problems do not satisfy the specific criteria of SSA Listing Section 1.02A. It is therefore necessary to analyze her other impairments.

c. Ms. Y's Shoulder and Wrist Problems

The Social Security disability system classifies Ms. Y's shoulder and wrist pain under the Musculoskeletal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 1.02B. Section 1.02B requires in relevant part as follows:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability)

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<sup>89</sup> Ms. Y testified that she sometimes uses a wheelchair, but there was nothing in her medical records indicating that she needs to use a wheelchair. Although Ms. Y testified that she had prescriptions for a wheelchair, she never provided a copy of such a prescription. Accordingly, her testimony on this issue has been discounted.

<sup>90</sup> See discussion in Section III(C)(3)(a), above.

and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With . . . (B) Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00(B)(2)(c).

Ms. Y could be found to be disabled by her *upper extremity joint pain* under Section 1.02(B) if she had a bad joint in each arm, and were she unable to perform fine and gross movements effectively. Section 1.00(B)(2)(c) defines "inability to perform fine and gross movements effectively" as follows:

Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities . . . [E]xamples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case, there is no question that Ms. Y's shoulder and wrist problems cause pain and limit her upper body strength and functionality to some degree. However, there is no evidence in the medical records of gross anatomical deformity, joint space narrowing, or bony destruction. In addition, the preponderance of the evidence indicates Ms. Y still has the ability to perform most fine and gross motor movements effectively as those terms are defined by Section 1.00(B)(2)(c). Accordingly, Ms. Y's upper extremity joint problems do not satisfy the specific criteria of SSA Listing Section 1.02(B). It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

d. Ms. Y's Asthma

The Social Security disability system classifies asthma under the Respiratory Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 3.03. Listing § 3.03's requirements for a finding of disability due to asthma are as follows:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;<sup>91</sup> OR

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year.

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<sup>91</sup> In order to satisfy the criteria under Section 3.03(A) it is necessary to satisfy the criteria of Section 3.02(A), which is incorporated by reference. Section 3.02(A) requires a finding of "chronic obstructive pulmonary disease, due to any cause, with the FEV [forced expiratory volume] equal to or less than the values specified in table I [of Section 3.02]."

Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

The medical evidence in the record demonstrates that Ms. Y's asthma symptoms are not severe enough to satisfy either the "A" or "B" criteria of Listing §3.03 (see Section II(A), above). It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

e. Ms. Y's Digestive System Problems

Ms. Y has two digestive system-related impairments - gastroesophageal reflux disease (GERD), and irritable bowel syndrome (IBS). The Social Security disability system classifies digestive system problems under the Gastrointestinal Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, §5.00 *et. seq.* SSA has no listing for either GERD or IBS. 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 demonstrates that Ms. Y's digestive symptoms are not 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 her other impairments satisfy the requirements of a relevant SSA Listing.

f. Ms. Y's Cardiovascular System Problems

Ms. Y has two cardiovascular system-related impairments - hypertension and hypercholesterolemia. The Social Security disability system classifies cardiovascular problems under the 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. Y's 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. Y's hypertension has had a debilitating effect on any specific organs or systems. Independent review of Ms. Y's medical records likewise fails to disclose a connection between Ms. Y's hypertension and any specific debilitating effect. Her hypertension therefore does not satisfy the requirements of § 4.00(H)(1).

Hypercholesterolemia (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. Y's other impairments satisfy the requirements of a relevant SSA Listing.

g. Ms. Y's Obesity

The Social Security disability system does not currently classify adult obesity under its own Listing.<sup>92</sup> It is therefore necessary to determine whether any of Ms. Y's other impairments satisfy the requirements of a relevant SSA Listing.

h. Ms. Y's Chronic Pain Syndrome

The Social Security disability system does not currently have a separate Listing for chronic pain syndrome.<sup>93</sup> Some courts have analyzed chronic pain syndrome under the SSA's somatoform listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.07.<sup>94</sup> This section defines "somatoform disorders" as involving "physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms." However, in Ms. Y's case, her symptoms of pain *are* generally related to "demonstrable organic findings" (*i.e.* her other physical impairments, most of which have their own SSA Listings). Accordingly, under the facts of this case, and without a physician's opinion to the contrary, the undersigned finds that it is not appropriate to analyze Ms. Y's chronic pain syndrome under the Listing for somatoform disorders.

i. Ms. Y's Hearing Problems

The Social Security disability system classifies hearing problems under its Listing for Special Senses and Speech at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 2.00 *et. seq.* The specific Listings dealing with hearing loss are Listings 2.07 and 2.08, which state as follows:

2.07 Disturbance of labyrinthine-vestibular function (including Ménière's disease), characterized by a history of frequent attacks of balance disturbance, tinnitus, and

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<sup>92</sup> See Social Security Ruling 02-1p, *quoted in Gross v. Astrue*, 2010 WL 1328462 (D. Md. 2010). Because there is no listing for obesity, SSA will find that an individual with obesity meets the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing.

<sup>93</sup> See *Postma v. Astrue*, 2012 WL 3912887 (N. D. Ohio 2012).

<sup>94</sup> See *Ramo v. Colvin*, 2014 WL 896729 (D. Minn. 2014); *Smith v. Astrue*, 2010 WL 2680656 (S. D. Ill. 2010); *Perry v. Astrue*, 2009 WL 435123 (S. D. Cal. 2009); *Trbojevich v. Astrue*, 2008 WL 398800 (D. Minn. 2008); *Wilson v. Barnhart*, 82 Fed. Appx. 204 (10th Cir. 2003).

progressive loss of hearing. With both A and B: (A) disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and (B) hearing loss established by audiometry.

2.08 Hearing impairments (hearing not restorable by a hearing aid) manifested by: (A) average hearing threshold sensitivity for air conduction of 90 decibels or greater and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000 and 2000 hz. (see 2.00B1); or (B) speech discrimination scores of 40 percent or less in the better ear . . . .

The only medical evidence in the record concerning Ms. Y's hearing loss is a report by a hearing specialist dated March 16, 2012 which found that Ms. Y's "hearing sensitivity is basically mild sensorineural hearing loss, AU."<sup>95</sup> There is no evidence in the record indicating that Ms. Y's hearing loss satisfies the criteria of Listing 2.07 or 2.08. It is therefore necessary to determine whether any of Ms. Y's other impairments satisfy a relevant SSA Listing.

j. Ms. Y's Vision Problems

The Social Security disability system classifies Ms. Y's vision problems under the "Special Senses and Speech" Listing at 20 C.F.R. Part 404, Subpart P, Appendix 1, §§ 2.02 - 2.04. Those Listings require as follows:

2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

2.03 Contraction of the visual field in the better eye, with: (A) the widest diameter subtending an angle around the point of fixation no greater than 20 degrees; OR (B) A mean deviation of -22 or worse, determined by automated static threshold perimetry as described in 2.00A6a(v); OR (C) a visual field efficiency of 20 percent or less as determined by kinetic perimetry (see 2.00A7b).

2.04 Loss of visual efficiency. Visual efficiency of the better eye of 20 percent or less after best correction (see 2.00A7c).

It is possible that Ms. Y's vision is bad enough to meet the above criteria. However, in order to prove that her vision problems meet the criteria for this Listing, Ms. Y needs exam or vision test results from an ophthalmologist demonstrating that her vision problems satisfy the specific requirements of Listing Sections 2.02, 2.03, or 2.04. That evidence is not present in the record in this case. Accordingly, Ms. Y cannot currently be found to be disabled based on her vision problems. It is therefore necessary to determine whether any of her other impairments satisfy the requirements of the relevant SSA Listing.

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<sup>95</sup> Ex. A17.

k. Ms. Y's Depression and Bipolar Disorder

The Social Security disability system classifies Ms. Y's depression and Bipolar Disorder under its Listing for "Affective Disorders" at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.04. For these disorders:

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. Y meets at least four of the criteria under § 12.04(A)(1). However, Ms. Y does not satisfy any of the required criteria of § 12.04(B) or § 12.04(C). Further, Ms. Chastain expected Ms. Y to "stabilize on medications," and Dr. Hess wrote on May 6, 2014 (eight days before the hearing in this case), that Ms. Y's mental health was "relatively stable on her current medications." Accordingly, Ms. Y cannot currently be found to be disabled based on her depression or bipolar disorder. It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

1. Ms. Y's Anxiety and Post-Traumatic Stress Disorder (PTSD)

SSA classifies anxiety and post-traumatic stress disorder (PTSD) 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. Y 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.

The record indicates that Ms. Y meets at least three of the criteria under § 12.06(A)(1). However, Ms. Y does not satisfy any of the required criteria of § 12.06(B) or § 12.06(C). Further, as noted above, Dr. Hess wrote on May 6, 2014 (eight days before the hearing in this case), that Ms. Y's mental health was "relatively stable on her current medications." Accordingly, Ms. Y cannot currently be found to be disabled based on her anxiety and post-traumatic stress disorder (PTSD). It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

m. Ms. Y's Personality Disorder

SSA classifies personality disorders at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 12.08. In order to satisfy the criteria of Listing § 12.08, Ms. Y must prove the following:

12.08 Personality Disorders: A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness. The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following: (1) seclusiveness or autistic thinking; or (2) pathologically inappropriate suspiciousness or hostility; or (3) oddities of thought, perception, speech and behavior; or (4) persistent disturbances of mood or affect; or (5) pathological dependence, passivity, or aggressivity; or (6) intense and unstable interpersonal relationships and impulsive and damaging behavior; 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.

The record indicates that Ms. Y meets at least three of the criteria under § 12.08(A). However, Ms. Y does not satisfy any of the required criteria of § 12.08(B). Further, as noted previously, Dr. Hess wrote on May 6, 2014 that Ms. Y's mental health was "relatively stable on her current medications." Accordingly, Ms. Y cannot currently be found to be disabled based on her personality disorder. It is therefore necessary to determine whether any of her other impairments satisfy the requirements of a relevant SSA Listing.

n. Ms. Y's Neurological Disorders (Post-Concussive Syndrome)

The Social Security disability system does not currently have a separate Listing for post-concussive syndrome (PCS). However, PCS is a set of symptoms related to concussion, which is a mild form of traumatic brain injury (TBI). SSA classifies brain injuries under its Listing for neurological disorders at 20 C.F.R. Part 404, Subpart P, Appendix 1, § 11.00 *et. seq.* The specific listing for cerebral trauma is § 11.18, which instructs that such impairments are to be evaluated "under the provisions of 11.02, 11.03, 11.04 and 12.02, as applicable." These listings require:

11.02 Epilepsy--convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month in spite of at least 3 months of prescribed treatment. (A) daytime episodes (loss of consciousness and convulsive seizures) or (B) nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 Epilepsy--nonconvulsive epilepsy . . . documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

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).

. . . .

12.02 Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities. 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 C are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following: (1) disorientation to time and place; or (2) memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or (3) perceptual or thinking disturbances (e.g., hallucinations, delusions); or (4) change in personality; or (5) disturbance in mood; or (6) emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or (7) loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing . . . . 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 organic mental 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.

Ms. Y clearly fails to satisfy the criteria of Listings 11.02, 11.03, or 11.04. The record does indicate that Ms. Y meets at least four of the criteria under § 12.02(A). However, Ms. Y does not satisfy any of the required criteria of § 12.02(B) or § 12.02(C). Further, as noted previously, Dr. Hess wrote on May 6, 2014 that Ms. Y's mental health was "relatively stable on her current medications." Accordingly, Ms. Y cannot currently be found to be disabled based on her post-concussive syndrome (PCS).

#### **IV. Conclusion**

Ms. Y is not currently working, she suffers from a number of significant impairments, and those impairments satisfy the 12 month durational requirement. However, Ms. Y has not presented evidence demonstrating that any of her impairments satisfy the specific criteria of any SSA "Listing." Accordingly, the Division correctly determined that Ms. Y is not currently eligible for Interim Assistance. The Division's decision denying Ms. Y's application for Interim Assistance is therefore affirmed.

DATED this 3rd 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 21<sup>st</sup> 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.]