

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

In the Matter of)	
)	OAH No. 14-1151-APA
U Q)	Agency No.
_____)	

DECISION

I. Introduction

U Q appealed the Division of Public Assistance’s denial of his Interim Assistance benefits. A hearing was held on August 12, 2014. Mr. Q represented himself and Public Assistance Analyst Jeff Miller represented DPA and testified on its behalf.

This case presents two issues. The first is whether the Division correctly terminated Mr. Q’s Interim Assistance (IA) benefits when he lost his Supplemental Security Income (SSI) denial appeal. On this issue the Division’s decision is affirmed because Mr. Q did not appeal the termination. The second issue is whether the Division correctly denied Mr. Q’s April 2014 IA application. On this issue, the Division’s decision is reversed because Mr. Q demonstrated that it was more likely than not that he met or equaled a Social Security disability listing.

II. Facts

Mr. Q received IA benefits from April 2012 through March 2014.¹ In March 2014, the Division learned that the Social Security Administration denied Mr. Q’s SSI appeal.² Because Mr. Q was not eligible for SSI, the Division terminated his IA benefits as of April 2014. On March 21, 2014, the Division sent Mr. Q its standard “benefits termination notice” regarding his IA benefits.³ The backside of the termination notice included fair hearing rights.⁴ The Division has no record that Mr. Q requested a fair hearing in response to the March 21, 2014, benefit termination notice.⁵

1 Miller testimony.

2 Miller testimony; Ex. 15. SSI benefits application denied by Social Security Appeals Council and dismissed by ALJ on February 12, 2013.

3 Ex. 12.

4 Miller testimony.

5 Miller testimony. The record was held open for two weeks in order for Mr. Q to speak with Access Alaska and determine if he had requested a fair hearing. He was to submit a copy of his fair hearing request or other evidence of fair hearing request. The OAH did not receive evidence of a fair hearing request in response to the March 21, 2014, termination notice.

As soon as Mr. Q was notified that his benefits were terminated he began working with Access Alaska to reestablish benefits.⁶ He set up an appointment with an appropriate medical provider and submitted a new SSI application.⁷ On April 22, 2014, the Division received Mr. Q's new IA and public assistance application.⁸ The Division denied his IA application and held his public assistance application while waiting for the determination of SSI eligibility.⁹ Mr. Q appealed the Division's IA denial on July 2, 2014.¹⁰ On July 3, 2014, the Division learned that Mr. Q's new SSI application was approved with a disability date of June 30, 2014.¹¹ On July 7, 2014, the Division notified Mr. Q that he was approved for public assistance benefits.¹² Because Mr. Q was approved for SSI benefits, the Division did not approve him for IA benefits.¹³

At hearing, Mr. Q did not challenge the Division's denial of his IA benefits after June 30, 2014, the date he began to receive SSI benefits. Instead, Mr. Q requested the Division award him IA benefits for April through June 2014, the time when he was no longer receiving IA benefits and before his SSI payments began. The basis of Mr. Q's request is that his SSI approval relied on the same documentation as his prior IA approval. Mr. Q also argues that his condition has not changed or improved since his original IA approval and the Division should not have terminated him in the first place.¹⁴ Mr. Q claims that part of the issue with his application was that a nurse, not a physician, had originally signed off on some of the paperwork.

III. Discussion

A. Mr. Q's interim assistance benefit termination

Interim Assistance is a monthly payment in the amount of \$280 provided by the State of Alaska to Adult Public Assistance applicants while their eligibility for SSI is being determined

6 Q testimony.

7 Q testimony.

8 Ex. 21.

9 Ex. 2- 2.1.

10 Ex. 3. Mr. Q signed the fair hearing request on July 1, 2014. The Division received the request on July 2, 2014.

11 Ex. 4.

12 Ex.

13 An applicant may receive IA benefits, while awaiting an SSI determination. Once SSI is approved or denied, IA benefits cease.

14 Mr. Q explained that he went through a similar experience several years ago. Access Alaska assisted him sorting that issue out as well.

by the Social Security Administration.¹⁵ Under the Interim Assistance regulations, the Division must conduct a medical review to determine “whether the applicant is likely to be found disabled by the Social Security Administration.”¹⁶ For an applicant who does not have one of the presumptive disabling conditions, the Division will consider “whether the applicant's impairment meets [the] Social Security Administration disability criteria for the listings of impairments.”¹⁷

According to regulation, the Division may only pay interim assistance while a person’s application for SSI is pending. The regulation states, in pertinent part, “[i]nterim assistance will end upon the division's receipt of notification of the Social Security Administration's final determination of eligibility or ineligibility for SSI benefits.”¹⁸

Here, Mr. Q’s SSI appeal was denied by the Appeals Council and dismissed by the Social Security Administration Administrative Law Judge in February 2013.¹⁹ Once the Division learned that his SSI application was denied, it was required to terminate his IA benefits. The Division did not learn of the denial until March 2014.²⁰ The Division did not have authority to continue Mr. Q’s benefits in light of his SSI denial.²¹

Mr. Q testified that as soon as he learned of the termination he started working with Access Alaska to reestablish benefits. Mr. Q argued that he thought he had requested an administrative hearing to challenge to termination. However, the evidence shows that Mr. Q chose to reapply for IA and SSI, not challenge his IA termination through the fair hearing process.

15 AS 47.25.455; 7 AAC 40.170(a) and (b); 7 AAC 40.375(a).

16 7 AAC 40.180(b)(1).

17 *Id.* The regulations specifically adopt 20 C.F.R. 404, subpart P, appendix 1, as revised as of September 1, 2013 (Appendix 1), by reference.

18 7 AAC 40.190(a).

19 *See Ex. 15.*

20 Had the Division learned of Mr. Q’s February 2013 SSI appeal denial earlier, it would have been required to stop Mr. Q’s IA payments.

21 Also, Mr. Q did not request a fair hearing in response to the Division’s March 21, 2014, termination notification. Mr. Q’s July 2, 2014, hearing request was in response to the Division’s denial of his second application for IA benefits, not the March 2014 termination. The Division received Mr. Q’s fair hearing request on July 2, 2014, well past 7 AAC 49.030’s 30 day appeal deadline to for the March termination notice. As such, Mr. Q waived his right to challenge the Division’s IA termination that took effect on April 1, 2014. This opinion addresses the question simply to clarify that the Division did not have the option to continue Mr. Q’s IA benefits.

B. Mr. Q's request for IA benefits April – June 2014

1. The Division's argument that Mr. Q would have received the same amount of benefits regardless of whether his April IA application was approved

Mr. Q requests that the Division supply him with IA payments from April – June 2014.²²

At hearing, the primary basis for his request was that Mr. Q believed he never should have been removed from interim assistance in the first place. As discussed above, the Division had no choice but to terminate Mr. Q's application when it learned his SSI appeal was dismissed. Mr. Q also argued that the medical evidence was essentially the same for both Interim Assistance applications and that his medical condition is the same or worse as compared to his condition when he was first approved for Interim Assistance in 2012. At hearing, the Division argued that even if Mr. Q's April 22, 2014 IA application had been approved by the Division, it would be "a wash," stating his total benefit amount would be the same. This is not the case.

Like all IA applicants, Mr. Q signed an agreement that allows Social Security to reimburse the state for IA funds paid.²³ Those funds are repaid to the state through deductions from a recipient's SSI benefit. However, the state is only repaid for IA received after the date the recipient is eligible to receive SSI payments.²⁴ In some cases, this results in the state getting reimbursed for a recipient's entire IA benefit amount because the SSI is retroactive to the date of the first IA payment. That is not the case here. Mr. Q applied for IA on April 22, 2014, but his SSI payment eligibility did not begin until July 2014.

If the Division had approved Mr. Q's April 22, 2014, IA application he would have received \$280 per month in May and June, and a prorated amount for April.²⁵ Contrary to the Division's argument at hearing, Mr. Q's SSI benefit would not be reduced to reimburse the state for IA payments related to April – June because he received no SSI benefits for those months.²⁶

22 Q testimony.

23 Miller testimony; Q testimony; *See* 7 AAC 40.375(c).

24 7 AAC 40.375(c)(1). "As a condition of receiving interim assistance, an individual including an individual eligible for interim assistance on or before the day before the effective date of this section, must agree, in writing to repay the interim assistance for any month beginning on or after the effective date of this section for which *the individual receives an SSI benefit.*" (emphasis added). Here, Mr. Q did not receive SSI until July. His IA received before July is not subject to recapture by the Division.

25 *See* 7 AAC 40.380(d), prorating the first month's benefit based on when the Division receives the application.

26 *See* 7 AAC 40.375(c)(1).

SSI does not reimburse the state for IA benefits unless the person was eligible for SSI for those same months. Therefore, Mr. Q's case would not be "a wash." Mr. Q would have received over \$560 in additional benefits if he had been approved for IA.

This leads to the next question- was the Division's decision to deny Mr. Q's April 22, 2014, IA benefit correct?

2. *The Division's denial of Mr. Q's April IA application*

Based on the information before it at the time, the Division's denial of Mr. Q's April 22, 2014, IA application was reasonable. The Division knew the Social Security Administration had denied Mr. Q's previous SSI application on the same or similar medical evidence. Yet, now that Mr. Q has challenged the denial, the Division's initial determination must be re-examined.

Because this is a new IA application, Mr. Q bears the burden to show, by a preponderance of the evidence, that the Division's denial decision was inaccurate. Mr. Q has met that burden.

At hearing, the ALJ may consider evidence that was not before the Division at the time of its original denial.²⁷ The evidence at this hearing was very limited. The parties did not engage in a battle of medical evidence, as is usually the case. Relying on its assertion that Mr. Q's benefit amount would be the same regardless if his April IA had been approved, the Division presented no medical evidence. The only information regarding the Division's decision making process was the IA denial letter. It contained the standard denial language:

[W]e have reviewed the medical evidence regarding the medical impairment identified on your AD-2 form. Based on the information that we received, with the releases you provided, your medical conditions, although severe, do not appear to be at a severity level that will meet the Social Security Administration's disability program criteria. Since it is not "likely" that you will be found disabled under the Social Security Administrative rules, you do not qualify for interim assistance benefits. Thus, interim assistance benefits are denied at this time. Note: did not receive from Baptist Med Center or VA med.²⁸

27 See *In re: V D.M.*, OAH No. 12-0612 (Dep't of Health and Soc. Serv. 2012). See also *Parker v. New Hampshire Department of Health and Human Services*, 969 A.2d 322, 329-30 (N.H. 2009); *Carter v. New Mexico Human Services Department*, 211 P.3d 219, 222-23 (N.M. App. 2009) (citing several prior cases); *Maryland Department of Health and Mental Hygiene v. Brown*, 935 A.2d 1128, 1144-46 (Md. App. 2007); *Albert S. v. Department of Health and Mental Hygiene*, 891 A.2d 402 (Md. App. 2006); see also 42 C.F.R. § 431.242(c), (e); cf. *Murphy v. Curtis*, 930 N.E.2d 1228, 1235-36 (Ind. App. 2010) (noting limits on scope of *de novo* inquiry).

28 Ex. 2.1

No additional medical information was in the file or presented at hearing.

Weighing against this is Mr. Q's credible testimony that 1) his medical condition is the same or worse from when he was initially approved for IA, 2) his denial was more of a provider-type or process error than anything to do with his disability level, and 3) he was approved for SSI benefits.²⁹ Overall, the evidence shows that it is more likely than not that Mr. Q's medical conditions meet or equal a Social Security disability listing and the Division's denial was inaccurate. In 2012, the Division determined that Mr. Q's medical condition met or equaled a Social Security disability listing. Mr. Q's medical condition has not improved and he has now been approved for SSI. This combination of Mr. Q's prior approval for IA with his current approval for SSI make it more likely than not that his impairments met or equaled a listing during April – June 2014. Therefore, he met the requirements for IA during those months.

IV. Conclusion

Mr. Q's March 2014 IA termination is upheld because he did not appeal that decision. Mr. Q's Interim Assistance denial is reversed. Mr. Q should have been approved for Interim Assistance beginning April 22, 2014, and ending when he was approved for SSI benefits beginning July 2014.

DATED: October 3, 2014.

Signed

Bride Seifert
Administrative Law Judge

²⁹ This case does not hinge solely on Mr. Q's SSI approval. The IA approval process is different from the SSI approval process. SSI uses a 5 step process and IA only uses the first 3 of those steps. As to steps four and five, although an Alaska superior court has held that the Department should apply steps four and five, that decision has been appealed. *See Gross v. State, Dep't of Health and Social Services, Division of Public Assistance*, Alaska Superior Ct., Case No. 3 AN-12-09838CI (Sept. 26, 2013). The record does not contain at which step Mr. Q's SSI was approved. This distinction may be critical to the analysis in another case. Here, however, Mr. Q was not merely approved for SSI, he was previously approved for IA.

Adoption

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

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 21st day of October, 2014.

By: Signed
Name: Bride Seifert
Title/Division: ALJ/OAH

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