

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

In the Matter of	)	
	)	
G E	)	OAH No. 14-2084-APA
_____	)	Agency No.

**DECISION**

**I. Introduction**

G E applied for Interim Assistance (IA) benefits. The Division of Public Assistance (division) denied her application because it concluded that she was not likely to be approved for Social Security disability benefits. Ms. E requested a hearing to contest that decision.

A hearing was scheduled but continued several times while awaiting the Social Security Administration's (SSA) decision on Ms. E's application. On March 6, 2015 the SSA approved Ms. E's application for Supplemental Security Income (SSI) effective September 2014.

An evidentiary hearing was held on March 25, 2015. Ms. E appeared by telephone and represented herself. The division was represented by Public Assistance Analyst Jeff Miller, who also appeared by telephone. The division's medical reviewer, Jamie Lang, testified in support of the denial. While the division's decision was made before the SSA found eligibility on March 6, 2015, given the effective date of eligibility was September 2014, the question of whether Ms. E was likely to be found eligible was definitively answered in the affirmative. However, because IA is only available to persons while they are waiting for an SSA decision on SSI eligibility, because Ms. E's SSA application was approved effective September 2014, Ms. E is not eligible for IA benefits despite her established disability.

**II. Facts**

G E has been diagnosed with Bipolar I disorder, mixed, severe w/psychosis.<sup>1</sup> She applied for Interim Assistance on May 21, 2014.<sup>2</sup> Her IA application contained her name, mailing address and signature.<sup>3</sup> Ms. E filed for Supplemental Security Income (SSI) on October 9, 2014.<sup>4</sup> The division denied her application for IA benefits on November 6, 2014

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<sup>1</sup> Exh. 3.78.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 2.  
<sup>4</sup> Exh. 3.91.

because it concluded Ms. E was not likely to be found disabled by the Social Security Administration (SSA).<sup>5</sup> On March 6, 2015, the SSA approved Ms. E’s SSI application effective September 2014.<sup>6</sup>

### III. Discussion

Interim Assistance is a benefit available to individuals while they are waiting for the Social Security Administration (SSA) to approve an application for Supplemental Security Income.<sup>7</sup> Among other requirements, to receive Interim Assistance an applicant must be “likely to be found disabled by the Social Security Administration.”<sup>8</sup> Ms. E has the burden of proof on this issue.<sup>9</sup>

The division argued it was correct to deny Ms. E’s application for IA because “the *objective medical evidence* in Ms. E’s file did not support that she met the Social Security disability criteria at the time of her application.”<sup>10</sup> The division also argues that SSA determination is not controlling because the SSA uses a five-step evaluation process in making its disability determinations and the division stops its evaluation at step three.

Under the SSA evaluation process, each step is considered in order, and if the SSA finds the applicant either disabled or not disabled at any step, it does not consider subsequent steps.<sup>11</sup> The first step in this process looks at the applicant’s current work activity. If the applicant is performing “substantial gainful activity,” the SSA will find that the applicant is not disabled.<sup>12</sup> This finding is made regardless of the applicant’s medical condition, age, education, or work experience.<sup>13</sup>

At step two, the SSA considers the severity of the applicant’s impairment. In order to be considered disabled, the impairment or combination of impairments must be severe, and must be expected to result in death or must have lasted or be expected to last at least 12

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<sup>5</sup> Exh. 4.3.  
<sup>6</sup> Exh. B-1.  
<sup>7</sup> 7 AAC 40.170(b); 7 AAC 40.375.  
<sup>8</sup> 7 AAC 40.180(b)(1).  
<sup>9</sup> 7 AAC 49.135.  
<sup>10</sup> Division Submission dated March 17, 2015 (emphasis in original).  
<sup>11</sup> 20 CFR §416.920(a)(4).  
<sup>12</sup> 20 CFR §416.920(a)(4)(i).  
<sup>13</sup> 20 CFR §416.920(b).

months.<sup>14</sup> If the impairment is not severe under this definition, then the applicant is not disabled.

At step three, the SSA looks at whether the impairment meets or equals the Listing of Impairments adopted by the SSA.<sup>15</sup> If it does, then the division finds the applicant likely to be found eligible for SSI.<sup>16</sup> The division stopped its inquiry at the third step. The SSA's March 6, 2015 letter does not state whether it found Ms. E disabled at step three whether it was necessary to apply steps four and five.

In this case, the division agrees that Ms. E meets the requirements of the first two steps in this process. Thus, the issue in dispute is whether she meets or exceeds one or more of the Listings, *i.e.* whether she was likely to be found disabled by the SSA and if so what is the date from which IA benefits are calculated.

#### A. *The Three-Step Versus Five-Step Analysis Is Irrelevant*

The SSA's finding that as of September 2014 Ms. E was disabled and eligible is evidence that not only was she likely to be found eligible as required by regulation but that she was eligible for SSI disability.<sup>17</sup> The division attempts to disregard this finding arguing its evaluation process somehow allows it to ignore the SSA's finding of disability. Whether a three or five step test is used is irrelevant. The SSA letter does not indicate at what step Ms. E was found eligible, just that she was eligible as of September 2014. The SSA finding was effective while the division still had Ms. E's application under consideration. The division's determination of ineligibility was made several months *after* the effective date that SSA found her eligible for SSI. Therefore, as a matter of law, Ms. E was "likely" to be found eligible.

#### B. *Reliance On The SSA Letter*

The regulations provide for a full *de novo* hearing including the supplementation of evidence at hearing.<sup>18</sup> Therefore, reliance on the SSA letter is appropriate.

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<sup>14</sup> 20 CFR §416.920(a)(4)(ii); 20 CFR §416.909.

<sup>15</sup> See 20 CFR § 404, Subpart P, Appendix 1.

<sup>16</sup> 20 CFR § 416.920(a)(4)(iii).

<sup>17</sup> 7 AAC 40.180; Exh. B.

<sup>18</sup> 7 AAC 49.170; 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).

### C. *The Date Of Application*

The division argues that its denial was correct based on the evidence in the record. The timeline in this case makes it unnecessary to determine whether, at the time of application, Ms. E was likely to be found disabled.

An applicant who is eligible for IA receives IA from the month the applicant files an “identifiable application” through the month that the applicant’s SSI eligibility is determined.<sup>19</sup> Ms. E filed an identifiable application in May 2014.<sup>20</sup> This raises the issue of whether Ms. E will receive IA retroactive to May 2014, and if not, from what date should IA be calculated.

Ms. E applied for IA in May, 2014. However, to perfect eligibility the regulations require that Ms. E “*must* apply for SSI within 30 days after the date of application.”<sup>21</sup> Ms. E did not apply for SSI until five months later, in October 2014. Because her IA application had not been denied it was still active and open to supplementation or completion for purposes of eligibility.

IA is linked with SSI and based on the premise that IA is a stop-gap received while awaiting the SSA’s determination of eligibility for SSI benefits. It is a maxim of regulatory construction that all sections of an act are construed together as a harmonious whole so that all sections have meaning.”<sup>22</sup> The idea that an applicant is eligible for IA must be read in conjunction with the requirement to apply for SSI within 30 days.<sup>23</sup> The regulations contemplate that the IA application is filed in the month prior to the SSI application.

Here, Ms. E’s application for IA was essentially pended during the time when the SSA found her eligible for SSI. The IA application was not denied for failure to apply for SSI. Ms. E did not fulfill her obligation to file for SSI until October. The SSA found her eligible for SSI because of disability as of September 2014. However, she would not have been eligible for IA until October 2014 when she filed her application for SSI. Therefore, it was conclusively established that Ms. E was found to be disabled by the SSA in September 2014. However, she was not eligible for IA until she filed for SSI in October. The

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<sup>19</sup> 7 AAC 40.375(a).

<sup>20</sup> 7 AAC 40.070(a) (an identifiable application is “an application which contains at least the applicant’s name, mailing address, or signature or witnessed marked”).

<sup>21</sup> 7 AAC 40.060(a).

<sup>22</sup> *Hendren v. State, Dep’t of Revenue, Child Support Enforcement Div.*, 957 P.2d 1350, 1352 (Alaska 1998).

<sup>23</sup> 7 AAC 40.060; 7 AAC 40.375.

division's belief that as of November 2014 Ms. E was not likely to be found disabled by the SSA is incorrect.

According to regulation, the Division may only pay IA 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."<sup>24</sup> Once an applicant receives SSI the applicant must repay the IA for any month beginning that the applicant also receives an SSI benefit.<sup>25</sup> Because Ms. E received SSI effective September 2014, a month before she was eligible for IA, there was no IA received.<sup>26</sup>

#### **IV. Conclusion**

G E was found disabled by the SSA effective September 2014. Her IA application was active and under review at that time. Therefore, it is conclusively established that she was likely to be found disabled by the SSA as of September 2014. However, she had not perfected her eligibility for IA until October 2014 when she filed for SSI. Under the facts of this case no IA is owed.

Dated this 3<sup>rd</sup> day of April, 2015.

Signed  
Rebecca L. Pauli  
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 20<sup>th</sup> day of April, 2015.

By: Signed  
Name: Rebecca L. Pauli  
Title: Admin. Law Judge, DOA/OAH

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

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<sup>24</sup> 7 AAC 40.190(a).

<sup>25</sup> 7 AAC 40.375(c)(1).

<sup>26</sup> However, had the division paid AI from October 2014 (date AI application was perfected) through March 2015 (date of SSA notice of eligibility) Ms. E would be required to repay AI as a deduction from her SSI payment. 7 AAC 40.375.