

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

In the Matter of)	
)	
C B)	OAH No. 17-0583-APA
_____)	Agency No.

DECISION

I. Introduction

C B applied for Adult Public Assistance. The Division of Public Assistance (Division) denied her request because the Social Security Administration denied Ms. B’s application for Supplemental Security Income (SSI). Ms. B requested a fair hearing to challenge the Division’s decision.

A hearing was held on July 5, 2017. Ms. B appeared and represented herself. Fair Hearing Representative Jeff Miller represented the Division.

Because eligibility for SSI is a prerequisite to eligibility for Adult Public Assistance benefits, the Division’s decision to deny Ms. B’s application for Adult Public Assistance benefits is affirmed.

II. Facts

On December 21, 2016, Ms. B filed an application with the Division for Adult Public Assistance (APA).¹ Ms. B’s APA application made her also potentially eligible to receive Interim Assistance (IA) benefits.² She is approximately 50 years old.³ On April 24, 2017, a Division representative documented receiving notice that the Social Security Administration (SSA) had denied Ms. B SSI on April 17, 2017.⁴ SSA denied Ms. B with code N32, which means SSA found Ms. B has the capacity for substantial gainful employment activity – other work, no visual impairment.⁵

To qualify for APA under the age of 65 requires a disability. The SSA determined that Ms. B was not disabled. Ms. B testified she had nerve damage, but stated she did not know if she was disabled because she had not had surgery yet.⁶

¹ Exs. 2-2.11.

² Ex. 23 (“A client does not apply for IA benefits; instead, the client applies for APA and the case worker determines whether or not to place the applicant into the Interim Assistance program.”).

³ Ex. 2.1.

⁴ Ex. 6.

⁵ Exs. 6.1, 6.3.

⁶ B Testimony.

On January 5, 2017, the Division received a Preliminary Examination for Interim Assistance form concerning Ms. B completed by M Z, MD.⁷ Dr. Z diagnosed Ms. B with fibromyalgia and Graves disease and stated her condition was expected to last 6 months. Dr. Z explained: “Graves disease should be cured within three months[.] Fibromyalgia is [a] chronic condition [and] might take 6 months to optimize treatment plan. Need to get Graves Disease better first.”⁸ On May 1, 2017, a Division representative documented that an Interim Assistance medical review for Ms. B was not needed because, as of that date, the SSA had denied her SSI application.⁹

On April 25, 2017, the Division mailed a notice to Ms. B informing her that her application for APA was denied because SSA had denied her application for SSI and that she was denied Interim Assistance because she had not appealed the SSA’s decision.¹⁰ On May 17, 2017, Ms. B requested a fair hearing.¹¹ On June 9, 2017, the Division mailed a revised notice to Ms. B repeating the information in the first notice and adding that she was denied Interim Assistance because SSA found she was not blind or disabled and denied her application for SSI as a result.¹²

III. Discussion

A. Adult Public Assistance

A person who is eligible for SSI benefits is also eligible to receive APA benefits from the State of Alaska. Conversely, a person who is not eligible for SSI is not eligible for APA.¹³ Therefore, the Division’s decision to deny Ms. B’s application for APA benefits was appropriate given the SSA’s determination she was ineligible for SSI.

B. Interim Assistance

Interim Assistance is a temporary benefit available to individuals while they are waiting for the SSA to approve their application for SSI.¹⁴ AS 47.25.455(a) provides: “The department shall pay at least \$280 a month to a person eligible for assistance under this chapter while the

⁷ Ex. 5.7-5.8. This form is filled out by hand and dated January 6, 2016. Presumably the date should be 2017. That would post-date the Division’s January 5, 2017, date stamp. This discrepancy is immaterial.

⁸ Ex. 5.8.

⁹ Ex. 9. This case note cites the SSA’s SSI denial and states, in part: “IA MED REVIEW NOT NEEDED NO NEED FOR IA DETERMINATION. NO ACTION TAKEN.”

¹⁰ Ex. 7.

¹¹ Ex. 10.

¹² Ex. 8.

¹³ AS 47.25.455(a); 7 AAC 40.030(a); 7 AAC 40.170(a); 7 AAC 40.375(a). *Moore v. Beirne*, 714 P.2d 1284, 1285 (Alaska 1986) (noting that “applicants for state aid [APA] must also apply for SSI and must meet SSI eligibility requirements”).

¹⁴ *Moore*, 714 P.2d at 1285 (“The purpose of interim assistance is to alleviate hardship on applicants for SSI during the application period.”). 7 AAC 40.170(b); 7 AAC 40.375.

eligibility of the person for benefits under 42 U.S.C. 1381 - 1385 (Title XVI, Social Security Act, Supplemental Security Income Program,) is being determined.” The Alaska Supreme Court has held that this “statute requires state payment of interim assistance through the SSI appeals process until a final SSI eligibility determination is made administratively.”¹⁵

The Division’s representative testified that Ms. B’s was an unusual case in that the SSA made its determination on Ms. B’s case before the state agency could make its determination on her Interim Assistance benefits.¹⁶ The SSA denied Ms. B’s application for SSI benefits on April 17, 2017.¹⁷ The Division correctly denied Ms. B’s application for APA benefits considering the SSA’s denial, but the Division essentially jumped the gun in simultaneously denying Ms. B Interim Assistance benefits. Ms. B was potentially eligible for Interim Assistance while SSA was determining her eligibility for SSI and, following the SSA’s denial, during any subsequent administrative appeal. An administrative appeal of an adverse SSI decision “through the administrative law judge level could take as long as 23 months.”¹⁸

After the SSA’s April 17, 2017, denial of SSI benefits, Ms. B had 60 days from the date she received notice of SSA’s denial to appeal that decision. SSA considers a notice received five days after the date of the notice.¹⁹ Thus, Ms. B had until June 21, 2017, to file her appeal. Yet the Division issued its first denial notice on April 25, 2017.²⁰ That decision was clearly premature, as was the May 1, 2017, decision to cease Ms. B’s medical review. The Division’s second notice on June 9, 2017, was still premature.²¹ The Alaska Supreme Court has explained that “[t]he clear purpose of the interim assistance statute was to remove interim assistance from the state’s discretion and make payments in accordance with the statute mandatory.”²² The upshot is that, even though the SSA denied her SSI application, the Division should have determined whether Ms. B was otherwise qualified for state Interim Assistance until her SSI eligibility was finally administratively determined, and that would not occur until all her appeal rights had been exhausted or expired.

¹⁵ *Moore*, 714 P.2d at 1287 (construing phrase “is being determined” in AS 47.25.455(a)).

¹⁶ Miller Testimony.

¹⁷ Ex. 6.1.

¹⁸ *Moore*, 714 P.2d at 1286.

¹⁹ See <https://www.ssa.gov/ssi/text-appeals-ussi.htm>.

²⁰ Ex. 7.

²¹ Ex. 8.

²² *Moore*, 714 P.2d at 1287.

Nevertheless, simply because the Division’s decision in this instance was premature does not mean its decision must be reversed. As the applicant, Ms. B has the burden of proof.²³ There is no evidence in the record that Ms. B has an appeal pending before the SSA; nor did she testify that an appeal was on-going.

Further, the SSA uses a five-step evaluation process in making its disability determinations.²⁴ “A regulation, 7 AAC 40.180, provides that the Department [of Health and Social Services] will determine whether an applicant is eligible for interim assistance based on ‘whether the applicant is likely to be found disabled by the Social Security Administration’”²⁵ Under the SSA evaluation process, each step is considered in order.²⁶ 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.²⁷ This finding is made regardless of the applicant’s medical condition, age, education, or work experience.²⁸ At step two, the SSA considers the severity of the applicant’s impairment. 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 months.²⁹

The evidence in the record shows that Ms. B’s condition is expected to last only 6 months.³⁰ Thus, the record shows that Ms. B could not satisfy the second step in the SSI evaluation process; therefore, she is not eligible for Interim Assistance benefits, and any error by the Division in prematurely deciding her case is more likely than not harmless.³¹

IV. Conclusion

The Division’s decision denying Ms. B Adult Public Assistance and Interim Assistance is AFFIRMED.

DATED: July 27, 2017.

By: Signed _____
David J. Mayberry
Administrative Law Judge

²³ 2 AAC 64.290(e).

²⁴ See 20 C.F.R. § 416.920; *Molina v. Astrue*, 674 F. 3d 1104, 1110 (9th Cir. 2012); *State v. Gross*, 347 P.3d 116, 118-19 (Alaska 2015).

²⁵ *Gross*, 347 P.3d at 119.

²⁶ 20 C.F.R. § 416.920(a)(4).

²⁷ 20 C.F.R. § 416.920(a)(4)(i).

²⁸ 20 C.F.R. § 416.920(b).

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

³⁰ Exs. 5.7-5.8, 6.1.

³¹ *Gross*, 347 P.3d at 118. The second notice issued by the Division on June 9, 2017, may reflect a decision on the merits by the Division of its evaluation of Ms. B’s eligibility for state Interim Assistance. If that was the agency’s intent, it does not express that intent explicitly.

Adoption

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

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

DATED this 11th day of August, 2017.

By: Signed _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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