

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

M H,)
)
 Appellant,)
 vs.)
)
 STATE OF ALASKA DEPARTMENT)
 OF HEALTH AND SOCIAL)
 SERVICES, DIVISION OF PUBLIC)
 ASSISTANCE,)
)
 Appellee.)
 _____)

Case No. 3AN-12-00000CI

MEMORANDUM OF DECISION AND ORDER

This matter comes before the Court as an administrative appeal of Appellee Department of Health and Social Service’s (the “Department”) denial following a review of Mr. M H’s request for state Interim Assistance (“IA”) while awaiting a final Social Security Administration (“SSA”) decision. Mr. H argues two points. First, that the Department’s denial of his state IA request was improper because it failed to inquire into all five of the factors found within the federal Social Security framework. Second, Mr. H argues that the decision was made during an administrative adjudication without him being heard on the issue and violated due process. The court vacates the Commissioner’s decision and remands to the Department for a disposition in accordance with requirements set forth by the SSA 5-part test. Because the court finds that Mr. H is entitled to a full hearing under the federal SSA factors, the court does not address Mr. H’s due process claim.

STATEMENT OF FACTS

Mr. H applied for Supplemental Security Income (“SSI”) and Alaska IA in December 2011 due to his inability to work because of alleged psychiatric issues that resulted from a violent assault in 2002. Mr. H received a hearing on March 21, 2012. Prior to a final decision being made, the determination of eligibility was transferred from the Department of Health and Social Services to the Department of Administration due to a new executive order taking effect.

In July 2012, the Alaska Office of Administrative Hearings (“OAH”) Administrative Law Judge (“ALJ”) issued a proposed order that determined under the five-step SSA standard that Mr. H was qualified to receive interim assistance under the Alaska Adult Public Assistance (“APA”) code for his psychiatric issues. The SSA uses a five-step evaluation process in making disability determinations.¹ Under the SSA standard, if the SSA finds the applicant is either disabled or not disabled at any step it does not consider subsequent steps, if it cannot determine either, it will proceed to the next step.² The five steps include: (1) the current work activity of the applicant; (2) the medical severity of the applicant’s impairments; (3) the consideration of a separate set of medical issues; (4) the residual functional capacity of the applicant; and (5) whether the applicant can make an adjustment to alternative employment.³

¹ 20 CFR §416.920.

² 20 CFR §416.920(a)(4).

³ *Id.*

In August 2012, the ALJ proposed decision was overturned by the Commissioner of the Department. The Commissioner found that the 5-part interpretation of the regulation was incorrect and that Mr. H's claim for IA must be denied because he failed to win the case by the third Social Security step. This decision is now the cause of the underlying appeal.

ANALYSIS

A. Standard of review

For questions of law involving agency expertise, the court applies the “reasonable basis” test.⁴ For questions of law not involving agency expertise, the court applies the “substitution of judgment” standard.⁵

The substitution of judgment standard applies “where the agency's expertise provides little guidance to the court or where the case concerns “statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and expertise.”⁶ In *State v. Aleut Corp*, the Supreme Court held:

The terms of AS 38.05.305 are not technical, and mere familiarity in their application by the Division of Lands does not render that agency any better able to discern the intent of the legislature than the courts. We will therefore apply our own independent judgment as to

⁴ *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982).

⁵ *Handley v. State, Dep't of Revenue*, 838 P.2d 1231, 1233 (Alaska 1992); *Kjarstad v. State*, 703 P.2d 1167, 1170 (Alaska 1985).

⁶ *Northern Alaska Environmental Center v. State, Dept. of Natural Resources*, 2 P.3d 629 (Alaska 2000).

whether the agency's interpretation complies with the legislature's intent.⁷

The court will apply the substitution of judgment standard to the Department's interpretations. Any interpretation of the governing statute does not implicate agency expertise or broad policy formulations but rather a determination and application of law and statutory interpretation.

B. Eligibility determinations for IA

The Supreme Court has given guidance as to the proper determination of Alaska's IA statute in two decisions, *Moore v. Beirne*⁸ and *State, Dept. of Health and Social Services v. Okuley*⁹.

In *Beirne*, at issue was whether the Alaska IA statute required payment of interim assistance when Social Security had been initially, but not finally, terminated. While the plaintiff alleged a due process violation for the withholding of IA benefits, the court looked to the legislative history and the purpose of the statute in reaching its holding, specifically avoiding any due process determination.¹⁰ The court in *Beirne* held that IA benefits be paid until a final determination was made by the Social Security Department, and based part of its holding on its finding that the legislature desired to have APA "be a supplement to, and *coordinate*[] with, SSI..."¹¹ The court found other factors indicating

⁷ 541 P.2d 730, 737 (Alaska 1975).

⁸ 714 P.2d 1284 (1986).

⁹ 214 P.3d 247 (2009).

¹⁰ *Beirne* at 1287.

¹¹ *Id.* (emphasis added).

the closeness of the APA statutes to the SSI federal statutes, noting that “applicants for state aid must also apply for SSI and must meet SSI eligibility requirements”¹² and that the state and federal definitions of “disabled” are virtually identical.¹³

Beirne’s reliance on the legislature’s intent in termination proceedings is instructive in the IA assessment context as well. If the purpose of APA is to in fact coordinate with SSI, logically, any determination that uses less than the 5 factors used by the SSI board in making a Social Security determination would fall short of the goals stated in *Beirne*.

The Supreme Court in *Okuley* also interpreted the APA statutes. *Okuley* dealt with the appropriateness of attorneys’ fees in a class action suit involving individuals who were wrongly denied IA benefits. The underlying action involved beneficiaries who were never paid their retroactive IA benefits. The court noted that IA determinations could incorporate more determining factors than simply 7 AAC 40.180 but that “assistance may also be available based on age, blindness, or financial need.”¹⁴

The broad reading by the Supreme Court in *Okuley* indicates that in the determination of IA benefits, the Department must consider a broad range of factors, rather than any sort of limitation that was believed to exist in the Commissioner’s decision. Because of the Supreme Court’s guidance in *Beirne* and *Okuley*, the court finds that Mr. H is entitled to a 5-part SSA assessment for IA.

¹² *Id.* at 1285 (citing 7 AAC 40.030, 060).

¹³ *Id.*

¹⁴ *Okuley* at n.3.

C. Mr. H's Due Process Rights

Because the court finds that Mr. H is entitled to a full hearing under the federal SSA factors, the court does not address Mr. H's due process claim.¹⁵

CONCLUSION

The Commissioner's decision is vacated and the matter is remanded to the Department for a decision based on the aforementioned 5-part SSA standard.

DATED in Anchorage, Alaska this 26th day of September 2013.

Signed

Erin B. Marston
Superior Court Judge

I certify that on 9/27/13
a copy of this notice was mailed to:

M. Regan, A. Hildebrand, SOA, DHSS Commissioner W. Steur

Signed

K. Griffith, Judicial Assistant

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

¹⁵ See *Beirne* at 1287.