

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

In the Matter of)
)
S X) OAH No. 14-0010-CMB
) Division No.
_____)

FAIR HEARING DECISION

I. Introduction

S X applied for Interim Assistance on October 24, 2013.¹ A disability adjudicator employed by the Division of Public Assistance (Division) concluded that Ms. X was severely mentally impaired, but that she did not qualify for Interim Assistance. The Division notified Ms. X that her application was denied. She requested a hearing.²

Ms. X’s hearing was held on February 19 and 25, 2014. Ms. X was represented by W N. Jeff Miller, Public Assistance Analyst with the Division, represented the Division.

This decision concludes that Ms. X’s severe mental impairment meets or equals the Social Security disability listing for Schizophrenic, paranoid, or other psychotic disorders. She therefore proved by a preponderance of the evidence that she satisfies the Interim Assistance program’s eligibility requirement that she be “likely to be found disabled by the Social Security Administration.”³ The Division’s decision denying her Interim Assistance application is reversed.

II. Facts

The following facts were established by a preponderance of the evidence.

Ms. X is 46 years old.⁴ She has a GED and is literate in English. She has limited work history; she worked as a phlebotomist briefly in 2004 – 2005, and as a pizza maker during 2008 – 2009.⁵ She has a history of cocaine use.⁶ However, her cocaine use is in remission.⁷

¹ Ex. 1.

² Ms. X initially requested a hearing with regard to both the Interim Assistance program and the Catastrophic and Acute Medical Assistance (CAMA) program. At hearing, she clarified that the denial of her Interim Assistance application was the only issue for hearing.

³ See 7 AAC 40.180(b)(1).

⁴ Ex. 1.

⁵ Exs. 3.83 – 3.85.

⁶ Ex. 3.47.

⁷ X Ex. 2, p.2; X Ex. 5, pp. 2, 4, 6. (X Ex. 5 consists of psychiatric progress notes from November 13, 2013, December 11, 2013, and January 14, 2014).

Ms. X has diagnoses of schizoaffective disorder and post-traumatic stress disorder. She is not expected to recover from those conditions.⁸ The December 5, 2013 “Preliminary Examination for Interim Assistance” form completed on Ms. X’s behalf by her psychiatrist states that she “has a serious and persistent mental illness. She suffers from extreme anxiety. She benefits greatly from medications of which she currently cannot afford.”⁹

Ms. X’s psychiatric records document ongoing visual and auditory hallucinations, including seeing bugs coming out of her skin, and occasional tactile hallucinations.¹⁰ Ms. X’s testimony at hearing was consistent with her continuing to experience visual, auditory, and tactile hallucinations. She described seeing peoples’ faces melting, hearing the TV speak to her, knowing that people can hear her thoughts, hearing voices in her head, and seeing bugs crawling out of her skin.¹¹ During the hearing, she was observed to be continually picking at her head, her skin, and her clothing.

Ms. X came to the hearing wearing knee pads and holding a bike helmet between her hands. She explained that she wore those for protection in the event that someone beat her up. When she was told she could wear her helmet, she was visibly relieved and put the helmet on immediately. She testified that she could not be around numbers of people and that she could not have people behind her. The room where her hearing was held had glass windows which faced a hallway where people occasionally walked by. She was seated directly in front of the window, with the window behind her, *i.e.*, people would occasionally walk down the hallway behind her. She was visibly nervous at her placement and glanced behind her frequently. She stated that she was an alien, and that the aliens had placed a chip in her neck.

Ms. X has no friends. She said her social contacts were her daughter, her grandchildren, and the staff at Community Mental Health. She described her daughter and grandchildren as

⁸ Ex. 3.18.

⁹ Ex. 3.18.

¹⁰ X Ex. 5, p. 1 (January 14, 2014 – “On occasion, she sees the bugs come out of her skin.” “... auditory hallucination of bugs in her ears.” “For perception, she does endorse hallucinations, namely hearing bugs and sometimes she sees some coming out of her skin. She very infrequently feels some crawling on her skin.”). X Ex. 5, p. 3 (December 11, 2013 – She hears voices “at night mostly. She also sees shadows.”). Ex. 3.30 (August 22, 2013 – “during our interview today in the middle of the sentence, she told this writer that the voice told her to stop talking to me and she put her head down for approximately 5 minutes, and then, she began to talk to me again. She states that when she turns the TV on, she knows what the TV is going to say.”).

¹¹ X testimony.

being safe to be around. She went to church approximately two months prior to her hearing and had to leave because there were too many people present.¹²

Linda Carlisle is a psychiatric-mental health nurse practitioner (PMHNP) with No Name Community Mental Health Services (NNCMHS). She is one of Ms. X's treating providers.¹³ Ms. Carlisle completed the Social Security form entitled "Medical Source Statement of Ability to Do Work-Related Activities (Mental)" regarding Ms. X's capabilities. In that form, she stated the following:

- Ms. X's ability to "understand, remember, and carry out instructions" was affected by her impairment. Specifically, she was moderately impacted in her ability to understand, carry out, and remember simple instructions. She was markedly impacted in her ability to make judgments on simple issues. She was extremely impacted with her ability to understand, carry out, remember, or make judgments on simple complex instructions/issues.
- Ms. X is markedly impacted in her ability to interact appropriately with co-workers. She is extremely impacted in her ability to interact appropriately with the public, supervisors, and in her ability to respond to usual work situations or routine work changes.
- Ms. X has difficulties with concentration, memory, is easily frustrated, experiences extreme anxiety with agoraphobia, experiences psychosis and auditory hallucinations.
- Ms. X had a urinalysis on February 14, 2014, which was negative for "substances."¹⁴

B Z-L is a clinical associate with NNCMHS. She has been working with Ms. X since September 2013. Her experience with Ms. X is that Ms. X forgets appointments; that she has to take Ms. X to her appointments; and that she has to go up to Ms. X's apartment to take her to go to her appointments.¹⁵

Jamie Lang, the Division's medical reviewer, determined that Ms. X was severely impaired by her mental impairment, but was not likely to meet the Social Security Administration's (SSA) disability criteria. She stated that there was not sufficient medical information in the record to determine if Ms. X's condition met or equaled the Social Security

¹² X testimony.

¹³ *See, e.g.*, X Ex. 5.

¹⁴ X Ex. 2.

¹⁵ B Z-L testimony.

disability listing requirements for mental impairments contained in disability listing 12.03 (Schizophrenic, paranoid, or other psychotic disorders) or disability listing 12.06 (Anxiety-related disorders). She specifically found that there was not enough medical evidence to show functional limitations in Ms. X's activities of daily living, socialization, concentration, persistence and pace, and that there had been no recent hospitalizations. Ms. Lang further opined that the medical evidence did not reflect the symptomology displayed by Ms. X at hearing (picking at skin for bugs, wearing a bicycle helmet etc.).¹⁶ The Division then denied Ms. X's application for Interim Assistance.¹⁷

III. Discussion

A. *The Five-Step Disability Determination Process*

The Adult Public Assistance program provides financial assistance to “aged, blind, or disabled needy [Alaska] resident[s].”¹⁸ Applicants who are under the age of 65 years are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁹ Once an applicant is approved for SSI benefits, he or she is then eligible to receive Adult Public Assistance benefits.²⁰

Interim Assistance is a monthly payment in the amount of \$280 provided by the State to Adult Public Assistance applicants while they are waiting for the SSA to approve their SSI application.²¹

In order to qualify for Interim Assistance, the applicant must be “likely to be found disabled by the Social Security Administration.”²² An Interim Assistance applicant has the burden of proving that he or she is likely to be found disabled by the SSA.²³

The SSA uses a five-step evaluation process in making its disability determinations.²⁴ Each step is considered in order.²⁵ In 2012, a Commissioner's level decision held that the

¹⁶ Lang testimony; Exs. 3.3, 16.

¹⁷ Ex. 4.

¹⁸ AS 47.25.430.

¹⁹ 7 AAC 40.170(a). Adult Public Assistance applicants whose income exceeds the SSI standards are not required to apply for SSI benefits. 7 AAC 40.170(a).

²⁰ 7 AAC 40.030(a); 7 AAC 40.170(a).

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

²² 7 AAC 40.180(b)(1).

²³ 7 AAC 49.135.

²⁴ 20 C.F.R. § 416.920.

²⁵ Under the SSA disability determination process, an applicant who satisfies both steps one and two goes on to step three. An applicant who does not satisfy step three goes on to step four and possibly step five. 20 C.F.R. § 416.920(a)(4).

Division should only use the first three steps of the SSA disability determination process, and not the full five-step evaluation process, in deciding whether an applicant qualifies for Interim Assistance.²⁶ However, that decision was appealed to the Superior Court. The Superior Court “vacate[d] the Commissioner’s decision and remand[ed] [the case] to the Department for a disposition in accordance with requirements set forth by the SSA 5-part test.”²⁷ The Superior Court decision is persuasive authority for the point that the full five-step evaluation process should be used in these Interim Assistance cases. Accordingly, this decision will proceed to steps four and five, if the applicant does not qualify at step three.

Each step of the five-step evaluation process 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.²⁸ 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 the applicant is not disabled.²⁹

At step two, the SSA considers 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.³⁰ In order to be considered disabled, the impairment or combination of impairments must be severe,³¹ must be expected to result in death, or must have lasted or be expected to last at least 12 months.³² 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 requirements, then it is necessary to proceed to step three.

The third step requires the evaluation of whether the impairment meets or equals one of the disability listings adopted by the SSA. If an applicant’s impairment meets or equals one of the applicable SSA disability listings, the applicant is disabled³³ and qualifies for Interim

²⁶ *In re M. H.*, OAH Case No. 12-0688-APA. (Commissioner of Health and Social Services 2012) <http://aws.state.ak.us/officeofadminhearings/Documents/APA/APA120668.pdf> at 2.

²⁷ *Gross v. State, Dept. of Health and Social Services*, Anchorage, Alaska Superior Court Case No. 3AN-12-09838CI (Marston, J., September 26, 2013). While a Petition for Review is currently pending in the Alaska Supreme Court, the Superior Court decision has not been stayed. (Alaska Supreme Court Case No. S-15339).

²⁸ 20 C.F.R. § 416.920(a)(4).

²⁹ 20 C.F.R. § 416.920(a)(4)(i).

³⁰ 20 C.F.R. § 416.908.

³¹ 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).

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

³³ 20 C.F.R. § 416.920(a)(4)(iii) and (d).

Assistance. If the applicant's impairment does not meet or equal one of the SSA listings, it is necessary to move on to step four.

At step four, which applies to applicants determined not to be disabled at step three, the SSA looks at the applicant's capacity for work and past relevant work. If the applicant is able to perform his or her past relevant work, the applicant is not disabled.³⁴ If the applicant is unable to perform his or her past relevant work, it is necessary to proceed to step five.

Step five requires an answer to the question of whether the applicant is capable of performing other work. Answering this question requires the application of the Social Security medical vocational guidelines that include the evaluation of the applicant's residual functional capacity, age, education, English literacy, and previous work experience.³⁵ If the applicant is not capable of performing other work, he or she is disabled.³⁶

B. Application of the Five-Step Process

1. Steps One and Two

The Division's decision to deny Ms. X's application was based upon the review by Jamie Lang, its medical reviewer. She determined that Ms. X satisfied steps one and two, being that she is not currently working and that she had a severe mental impairment that had lasted or was expected to last for at least 12 months.³⁷

2. Step Three

Ms. Lang determined that Ms. X did not meet or equal the applicable Social Security disability listings. Ms. X does not appear to have any substantive physical impairments. She, however, has two psychiatric diagnoses: schizoaffective disorder and post-traumatic stress disorder. These fall within disability listing 12.03 (Schizophrenic, paranoid, or other psychotic disorders) and disability listing 12.06 (Anxiety-related disorders).

In order to meet or equal the requirements of disability listing 12.03 (Schizophrenic, paranoid, or other psychotic disorders), Ms. X must satisfy the following criteria:

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:

³⁴ 20 C.F.R. § 416.920(a)(4)(iv).

³⁵ See 20 C.F.R. Part 404, Subpart P, App. 2, § 201.

³⁶ 20 C.F.R. § 416.920(a)(4)(v).

³⁷ Lang testimony; Ex. 3.3.

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

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 schizophrenic, paranoid, or other psychotic 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.^[38]

Ms. X satisfies the “A” criteria for disability listing 12.03 because she has a medically documented history of ongoing hallucinations, visual, auditory, and tactile. Ms. Carlisle’s “Medical Source Statement of Ability to Do Work-Related Activities (Mental)” demonstrates that Ms. X is either markedly or extremely impaired in her abilities to deal with the public, co-workers, and supervisors, that her judgment was markedly or extremely impaired in making decisions, and that she experienced difficulty with memory, concentration, and had extreme

³⁸ 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.03.

anxiety with agoraphobia. Ms. X's social interactions are limited to her mental health providers, and her daughter and grandchildren. She described her daughter and grandchildren as being "safe." These factors lead to the conclusion that it is more likely true than not true that Ms. X is, at a minimum, markedly impaired in her abilities to conduct her activities of social functioning³⁹ and to maintain concentration, persistence, and pace. Ms. X therefore meets the "B" criteria. As a result, she meets or equals Social Security Disability listing 12.03.

There is insufficient evidence in the record that Ms. X meets or equals the disability listing for Anxiety Related Disorders.⁴⁰ However, Ms. X does not need to satisfy the listing requirements for both Schizophrenic, paranoid, or other psychotic disorders and Anxiety Related Disorders to meet her burden of proof. One is sufficient. Ms. X has satisfied that she meets step three of the Social Security disability evaluation process because she meets or equals the listing for Schizophrenic, paranoid, or other psychotic disorders. She is therefore "likely to be found disabled by the Social Security Administration."⁴¹

IV. Conclusion

Ms. X has met her burden of proving that she is likely to meet the Social Security Administration's criteria for disability. Accordingly, Ms. X is entitled to receive Interim Assistance. The Division's decision to deny her application for Interim Assistance benefits is reversed.

DATED this 3rd day of April, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁹ "'Social functioning' refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers." 20 C.F.R. § Part 404, Subpart P, Appendix 1, § 12.00C(2).

⁴⁰ Similar to the listing for Schizophrenic, paranoid, or other psychotic disorders, the Anxiety Related Disorder listing has "A", "B", and "C" criteria. The "A" criteria for the Anxiety Related Disorder listing requires a showing of specific symptoms such as motor tension, autonomic hyperactivity, apprehensive expectation, vigilance and scanning, or persistent irrational fears of specific objects, situations, or activities, or recurrent severe panic attacks, or recurrent obsessions/compulsions. 20 C.F.R. § Part 404, Subpart P, Appendix 1, § 12.06A. While there were indications of these symptoms present in Ms. X's behavior during the hearing, such as her explanation for wearing a bike helmet and knee pads and her visible discomfort with her placement in the hearing room, these are not medical evidence. Similarly, there is insufficient evidence to show that Ms. X meets the "C" criteria, which would require a "complete inability to function independently outside the area" of her home.

⁴¹ 7 AAC 40.180(b)(1).

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 17th day of April, 2014.

By: *Signed* _____

Name: Lawrence A. Pederson

Title/Agency: Admin. Law Judge, DOA/OAH

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