

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

In the Matter of)

B C)
_____)

OAH No. 15-1354-APA
Agency No.

FAIR HEARING DECISION

I. Introduction

B M. C's parents, L and W Q, applied for Interim Assistance for her. The Division of Public Assistance (Division) concluded that Ms. C did not qualify for Interim Assistance. The Division notified Ms. C that her application was denied. Her parents requested a hearing. Her step-father, W Q, represented her at the hearing.

Several hearings and status conferences were held. Sally Dial, Public Assistance Analyst with the Division, represented the Division. The record was held open during the hearing process for additional medical records to be filed and to give the Division time to review them. The record closed on December 18, 2015.

This decision concludes that Ms. C has a severe mental impairment, which is due to Anxiety Related Disorders, specifically selective mutism, agoraphobia and Post Traumatic Stress Disorder (PTSD). Her severe mental impairment does meet the applicable Social Security disability listing. Additionally, there is medical evidence and other that supports a finding that she is unable to work and is completely unable to function independently outside the area of her home. The evidence in the record also shows that her impairment is expected to last a period of not less than twelve months.

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."¹ The Division's decision denying her Interim Assistance application is overturned.

II. Facts

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

¹ See 7 AAC 40.180(b)(1).

Ms. C is 23 years old and has never been employed and lives with her mother and her step-father. Since a six-month period of sexual and physical abuse when she was six-years old, she has exhibited symptoms of Anxiety Related Disorders. Ms. C became increasingly mute, which led to her leaving public school for home schooling at age twelve. She did not graduate from home-school high school until age 20. Her step-father explained that she spends almost all of her time by herself in her room, and usually only comes out of her room when everyone else is asleep. She is rarely able to speak, even to her own family members. The only time she regularly leaves the house is to go to church with her other family members on Sunday. She does not speak to strangers. It has been difficult for her to get treatment because she does not speak to her treatment providers, and generally is only willing to shake her head when she is being heavily coached.²

The Division, however, had very little documentation of Ms. C medical status when the Division determined that Ms. C does not meet or equal the applicable Social Security disability listing. This was because her parents had had little success with getting her treatment. Ms. C had not been eligible for Medicaid when she applied for Interim Assistance and she could not participate meaningfully in treatment due to her anxiety with strangers and her mutism. Ms. C also lives in a town relatively limited treatment options. Mutism, especially in adults, is very rare.³

Since the Division's determination was made, Ms. C has been under the care of Psychiatrist K R. D, DO. This treatment began on November 18, 2015. Since she began taking the prescription medication Sertraline for her disorder, her stepfather has noticed some marginal improvement in her condition, in that she now sometimes comes out of her room for about forty five minutes to watch television when other members of her family are awake.⁴

Ms. C's step father provided psychiatric records, including and evaluations dated November 18, 2015 and December 9, 2015, from Psychiatrist K R. D, DO. Doctor D reported that during the interview, Ms. C demonstrated motor tension and profuse sweating. Ms. C demonstrated vigilance and scanning. Ms. C demonstrated a persistent irrational fear of a

² Recording of Hearing, Testimony of W Q & November 18, 2015 and December 9, 2015 letters from Psychiatrist K R. D, DO.

³ Exhibits 1-5, Recording of Hearing.

⁴ Recording of Hearing, Testimony of W Q & November 18, 2015 letter from Psychiatrist K R. D, DO.

specific activity or situation in that she is agoraphobic, rarely leaves her home and never leaves her home alone. Doctor D noted that it is difficult to determine whether Ms. C has obsessions or recurring intrusive recollections of her abuse because of her mutism.⁵

Doctor D reported Ms. C's symptoms resulted in marked restrictions of her activities of daily living, and marked difficulty in maintaining social functioning and maintaining concentration, persistence or pace, and she is completely unable to function independently outside the area of her home.⁶

The medical records show that Ms. C's providers since the trauma of her childhood abuse have diagnosed her with suffering disabling Anxiety Related Disorders, specifically selective mutism, agoraphobia and Post Traumatic Stress Disorder. Her severe mental impairment does meet the applicable Social Security disability listing. Additionally, the medical evidence and her history show that her impairment is expected to last a period of not less than twelve months.⁷

The evidence in the record shows that Ms. C's impairment has been disabling most of her childhood and for all of her adult life. The evidence in the record would not support a finding that she is likely to reach a level of functionality where impairment would not meet the applicable Social Security disability listing in as little as twelve months. As noted above, her mutism makes her disorder extremely difficult to treat with therapy and she has improved only very marginally with medication.⁸

III. Discussion

The Division had to make a determination on very limited information on Ms. C because her condition has made it difficult for her parents to obtain helpful treatment for her. Ms. C apparently did not see a doctor for many years. Thanks, in part to the Division's assistance and patience during the hearing process, Ms. C is now receiving the treatment she needs and has received up to date medical evaluations that establish her eligibility.⁹

⁵ November 18, 2015 and December 9, 2015 letters from Psychiatrist K R. D, DO & W Q's submission of medical records received November 12, 2015.

⁶ December 9, 2015 letter from Psychiatrist K R. D, DO.

⁷ November 18, 2015 and December 9, 2015 letters from Psychiatrist K R. D, DO & W Q's submission of medical records received November 12, 2015.

⁸ Recording of Hearing, November 18, 2015 and December 9, 2015 letters from Psychiatrist K R. D, DO & W Q's submission of medical records received November 12, 2015.

⁹ Exhibits 1-5, Recording of Hearing, November 18, 2015 and December 9, 2015 letters from Psychiatrist K R. D, DO & W Q's submission of medical records received November 12, 2015.

Alaska Public Assistance benefits are payable to eligible needy aged, blind and disabled persons pursuant to AS 47.25.430-.615. Applicants who are under age 65, like Ms. C, are required to apply and qualify for federal Supplemental Security Income (SSI) benefits.¹⁰ Interim Assistance benefits are paid monthly to eligible Adult Public Assistance applicants while they are waiting for the Social Security Administration to approve their SSI application.¹¹

An applicant qualifies for Interim Assistance benefits if the Division determines the applicant to be disabled under 7 AAC 40.180.¹² The applicant must submit to an examination by a physician¹³ and the division's determination as to whether the applicant is disabled is based on:

- (1) a medical review by the department as to whether the applicant is likely to be found disabled by the Social Security Administration, including whether the applicant's impairment meets... (B) Social Security Administration disability criteria for the listings of impairments....;
- (2) medical evidence provided by the applicant or obtained by the department;
- (3) other evidence provided by the applicant...; and
- (4) a review of the written results of the... physician's examination...^[14]

In determining whether the applicant's disability meets the Social Security Administration's disability criteria, the Division considers whether the:

- (1) ...applicant's condition is listed as an impairment category...;
- (2) medical information...documents the applicant's impairment;
- (3) impairment affects the applicant's activities of daily living;
- (4) ...applicant can perform any other work, including sedentary work; and
- (5) ...applicant's impairment has lasted or is expected to last for a continuous period of not less than 12 months.^[15]

Ms. C's primary disabling condition is her mental health. Ms. C's mental health issues make it impossible for her to function independently outside her home, and she only functions in her home with the support of her parents. The evidence in the record shows that

¹⁰ 7 AAC 40.170(a).

¹¹ 7 AAC 40.170(a), (b); AS 47.25.455.

¹² 7 AAC 40.170(b).

¹³ 7 AAC 40.180(a).

¹⁴ 7 AAC 40.180(b)(1)(B), (2), (3), (4).

¹⁵ 7 AAC 40.180(c)(1)-(4).

in the past these conditions have substantially and materially impacted her ability to find and maintain employment.

Mental Health Diagnoses

Mental health diagnoses are covered in section 12.00 of the listings. Ms. C's diagnoses of selective mutism and other Anxiety-related disorders are covered by listing 12.06. Each of these listings requires specific medically documented findings to support the diagnoses.¹⁶

This listing provides:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

¹⁶ Listing 12.06(A).

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home. [.17]

A marked restriction or difficulty means more than moderate, but less than extreme.¹⁸ There is evidence in the record of Ms. C's marked restrictions in activities of daily living. The evidence in the record also shows more than difficulty in social functioning, and in maintaining concentration. This is born-out by the testimony of her step-father, her medical records, and her education and employment history.

The record shows that Ms. C is not able to function outside of the home; she would be homeless without her parents' support and is only able to function at home because of that support. Ms. C's psychiatrist, Doctor D, carefully went through the 12.06 Anxiety-related disorders listing as it applies to Ms. C in her December 9, 2015 letter and provided conclusions that support a finding that she meets the Social Security Administration's criteria for disability. Ms. C showed that she meets the 12.06 Anxiety-related disorders required findings for A1, a, c, and d; A2; B1, 2 and 3: and C.

¹⁷ Listings 12.06.

¹⁸ Listing 12.00(C).

The only issue left unaddressed in that report is Ms. C's prognosis, but the other evidence in the record shows that her impairment both has lasted and is expected to last a period of not less than twelve months.

IV. Conclusion

Ms. C has met her burden of proving that she is likely to meet the Social Security Administration's criteria for disability. The Division's decision to deny her application for Interim Assistance benefits is overturned.

DATED this 31st day of December, 2015.

Signed _____
Mark T. Handley
Administrative Law Judge

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 February, 2016.

By: *Signed* _____
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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