

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 8985  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-one year old man with 16 years of education and a college degree. He has worked as a security guard, an elementary school teacher, a school clerk, and a laborer (painting, woodworking, grounds maintenance). He has never held a job for more than six months.

2. Since 1980, the petitioner has had problems with stiff muscles, shortness of breath, dizziness, fatigue and more recently diarrhea and back pain. He feels his concentration is impaired by these problems and feels this caused his inability to finish graduate school in 1985-1986. When he last worked in 1987, he felt his various problems made him unable to do either laboring or clerical jobs due to inattentiveness (he had several minor accidents), exhaustion, and physical awkwardness and instability. He maintains at the present that he is too weak to do more than a 1/2 hour of

physical labor at a time and too forgetful and tired to do mental labor.

3. For the last two years, the petitioner has not worked and has lived with a relative. He cares for his own personal needs, shops for and cooks his food and cleans his living area. He spends some three hours per day reading books (he used to be able to do more) and listening to music. His social activities consists of having lunch with friends, attending church on a daily basis and taking short walks. He usually takes a nap every afternoon. There are days when he cannot read at all and sleeps for extended periods.

4. Over the last nine years, he has not had much medical treatment for or evaluation of his symptoms. In 1986 and 1987 he was treated for flu, strep throat, and ear infections at which time he complained of a lack of energy but failed to follow through with diagnostic exams set up by his doctor. In late 1988, he went to a rheumatology clinic for evaluation of his joint pain but no signs of arthritis could be found during that examination. Because his sister had been diagnosed as having fibrositis, an inflammation of the fibrous connective tissue, the petitioner and his doctors suspect that he may have the disease as well. Because there are no specific laboratory tests or X-rays which can detect fibrositis, it is difficult to confirm a diagnosis. The petitioner's current diagnosis is based upon

a documented sleep disturbance disorder which is felt to be associated with fibrositis and his reported symptoms of muscle stiffness, pain and fatigue. The above evidence is substantial enough to conclude that the petitioner suffers from fibrositis.

5. The petitioner's current course of treatment consists of medication with Amitriptylline, a drug which improves the quality of sleep. It is hoped that the lessening of his sleep disorder will lead to a lessening of the pain and stiffness in his joints.

6. Although the petitioner reports that he has no energy and is unable to accomplish tasks due to his fatigue and muscle stiffness, his reported daily activities contradict that assertion. In spite of his problems, he continues to care for himself, clean his living area, shop and cook, read for hours, visit with friends and get to and attend daily religious services. It must be concluded, therefore, that the petitioner's ability to function is not severely compromised, although, to be sure, he is frequently uncomfortable and tired during the day. There is no evidence from his physicians that his disease, a disease which is not usually expected to be severely disabling and is thought to be amenable to control through medication, exercise, heat therapy and counseling, is unusually severe in his case. In addition, unlike other forms of arthritis, this disease does not cause crippling or disfigurement of the joints and is not exacerbated by usage of the joints.

ORDER

The decision of the department is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Although the petitioner probably has a diminished ability to perform the level of activity he used to, there is no evidence upon which to conclude that he has an impairment which significantly limits his physical or mental ability to do basic work activities. His own description of his daily routine shows that he is able to perform and sustain activities involving walking, sitting, bending, reading, planning and thinking, and that he continues to have considerable social contacts and interests. If this should cease to be so, the petitioner is encouraged to reapply and to submit corroborating evidence from his treating physicians that in spite of attempts to manage his symptoms, they have worsened and prevent him from performing basic work activities. Until he has such evidence, the

petitioner must be found to have no medical impairment which is severe enough to meet the definition of disabling. See 20 C.F.R. § 416.920(c).

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