

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9023
)
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

The petitioner is a 46-year-old man with a high school education and a work history of trades in the construction industry (e.g., carpentry, welding, and operating heavy equipment). He has not worked since 1987.

The petitioner has a history of arthritis in the lumbar spine and in his right knee. More recently, he suffered ligament damage in his right ankle. Recent medical reports from his treating physician, an orthopedic specialist, amply document these impairments and the limitations they impose on the petitioner.

In a letter dated August 24, 1989, (which includes office notes dated June 5, 1989) the petitioner's physician wrote:

Enclosed please find a copy of our last office note on [petitioner's] evaluation. As you can see his disability is based on three major areas: 1. The spondylolisthesis of the lumbosacral spine at L5,S1. If he sits for prolonged periods of time this exacerbates the symptoms causing him a great deal of pain. We have tried physical therapy and occasional wearing of a lumbosacral corset for controlling the

symptoms. 2. Severe degenerative arthritis of his right knee. The arthritis prevents him from climbing ladders or stairs or any vigorous activity. This should worsen with the passage of time but eventually he will need a total knee replacement. 3. The unstable ankle which requires him to wear a Swede-0 ankle brace with double plastic inserts just for stability. If he does not wear it the ankle gives out and he falls to the ground. If he had any one single impairment he probably could work at a sitting job, however, the accumulative affects of all three areas of disability prevent him from any prolonged sitting, standing or vigorous activities. The ankle is amenable to surgical treatment and that would at least give him one stable area that he could count on in his ambulation.

. . .

"(OFFICE NOTES)"

This 46-year-old white male was seen and evaluated for a disability determination. Particular attention was placed at his lumbosacral spine, right knee and right ankle.

With regard to his lumbosacral spine the patient has had low back complaints since high school, roughly a 30-year history of problems. At that time he was seen and treated by Dr. H. who apparently recommended surgery. He was also referred to the Hitchcock Clinic where he was seen by Dr. L.H. He was given extensive conservative treatment but his back pain persisted through the years. He was seen by Dr. P.U. 10 years ago for his low back pain who advised continued conservative treatment. Most recently he saw Dr. A. where he has been manipulated and treated for his low back.

His complaints are of constant, chronic low back pain which is relatively nonradiating. Occasionally he has pain going to his buttocks but he has no real radicular component. He does describe numbness and tingling that occur in his legs, however.

Physical examination of his LS spine show that his gait is normal. He stands straight with a level pelvis. There is a decreased ROM of his LS spine with some pain on extreme of motion. Straight leg raising test is to 80 degrees and bilaterally positive for tight hamstrings but not sciatic stretch. Reflexes were physiological, sensation intact, power was normal.

X-rays taken of the LS in our office showed a grade I spondylolisthesis at L5, S1, degenerative disc disease at L5, S1, advanced degenerative arthritis at L3/4, 4/5, and 5/1.

With regard to his right knee, the patient sustained an injury to his right knee in high school and has had a diagnosis of a torn anterior cruciate ligament. He has had intermittent problems with the right knee, trouble bending down, getting up and occasional giving out, catching and locking of the knee.

On examination his knee has hypertrophic changes. There was a varus deformity, decreased ROM, marked patella femoral crepitus.

X-rays of the knee taken in our office show advanced grade III/IV changes of degenerative arthritis of the patella femoral joint, changes of arthritis in the medial compartment with marked narrowing and hypertrophic osteophytic changes in the medial compartment.

The patient's severe tears of the lateral ligaments of his ankle are well documented leaving him with a very unstable ankle for which he has to wear a Swede-O ankle brace where he just has recurrent episodes of giving way.

It is my impression that the patient has some major joint problems.

1. Low back pain which is secondary to a spondylolisthesis at L5, S1. I would recommend continued conservative treatment, rest, occasional physical therapy and wearing a lumbosacral support, hopefully keeping him in the work force.

2. Severe degenerative arthritis of the right knee. Eventually some day I am sure it will require a total knee replacement. For the present I do not think a valgus osteotomy would help him because of the amount of patella femoral arthritis. Perhaps in the future arthroscopy may be of some aid but I feel the prognosis for the knee is not good.

3. He has an unstable ankle with recurrent giving way. The instability is real and readily apparent. I think he could really benefit by reconstruction of his lateral ligaments of the ankle, which has predictably good results with this procedure.

Other statements of the same treating physician indicate that the petitioner's problems have persisted for at least the last 12 consecutive months. In response to specific interrogatories posed by the hearing officer¹ the treating physician stated that the petitioner was limited to 1/2 hour sitting in one place and that the petitioner's impairments would limit his abilities to sit during a six-to-eight-hour workday.

Based on the above, which is absolutely uncontroverted, it is found that the petitioner cannot perform his past work or any job that requires walking, extended periods of standing or sitting, or any lifting. The department does not maintain that there are a significant number of jobs in the national economy that would accommodate these limitations.

ORDER

The department's decision is reversed.

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.

Uncontroverted medical evidence establishes that the petitioner meets the above definition. Therefore, the department's decision is reversed.

FOOTNOTES

¹Pursuant to Human Services Board Rule No. 7.

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