

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9190
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her 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-year old woman with a 10th grade education and a GED who has only a few very brief stints at working as a store clerk and chambermaid. These jobs are not considered relevant work experience.

2. The petitioner suffers from complex migraine headaches which caused her to have a seizure in 1986. She has had no seizures since then and takes Elavil to control the migraines. Nevertheless she has severe headaches approximately threetimes per week which usually last less than an hour each.

3. The petitioner also suffers from hypothyroidism, obesity, and chronic alcohol dependency. Although these medical conditions have caused problems for her in the past and are potential future problems, they currently pose nosignificant limitations. The petitioner has been able to

control these problems through medication, support groups and counseling. She has also been a client of Voc. Rehab. and has taken part in a job training program for clerical workers.

4. The petitioner's main limitation is caused by her irrational fear of having another seizure. The anxiety created by that fear has caused the petitioner to fear leaving her home, to avoid public places, bodies of water and taking showers in her own home. Her anxiety has caused her to start using some alcohol again after many years of abstinence. Her social life now consists of talking to her mother and son on the telephone. She has a machine to answer the phone so she will not have to speak to people. She spends her days watching TV and crocheting. She does her own basic cooking and house cleaning but has help with heavy things and with anything that must be carried up and down stairs. Because she believes that light may bring on seizures, she wears sunglasses at all times, even inside. The petitioner has had the above restrictions for at least one year.

5. The petitioner's fear of seizures caused her to leave her last job in 1986 as a stock clerk at a Department store. She missed a lot of work due to headaches and could not concentrate on her duties because she was preoccupied with having another seizure.

6. Both the petitioner's treating physician and a reviewing consultant agree that the petitioner's anxiety is

severe and interferes greatly with her ability to work. However, it is believed that after a course of psychotherapy to help her deal with her fears and to stabilize her deteriorating sobriety, she should be able to work.

ORDER

The decision of the Department 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.

The petitioner has been diagnosed as suffering, among other things, from severe anxiety for over one year. The Social Security regulations define this condition as disabling when the following conditions are met:

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. Automatic Hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which result 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

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. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from the situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

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

20 C.F.R. § 404, Subpart P, Appendix 1, Rule 12.06.

The evidence shows that the petitioner has a recurrent obsession with having seizures which causes her marked distress. Thus, she meets the test set out in paragraph A.4. The evidence also shows that the petitioner's anxiety

has markedly restricted her ability to perform daily functions such as bathing and showering, to function socially outside her home, and to concentrate on and to complete tasks. In addition, she had an episode of deterioration in a work setting due to her phobia which kept her from doing her job and has for the last three years repeatedly destroyed her confidence in her ability to function or work outside the home. This evidence meets the requirements in paragraph B.1-4, and probably paragraph C. as well. As the petitioner meets this listing, she must be found to be disabled. 20 C.F.R. § 416.920(d).

As her physicians have noted, the petitioner is expected to improve with therapy and should be able to return to work. The petitioner is therefore advised that she must seek treatment for her anxiety disorder and other problems (unless she can show good cause not to do so), or her eligibility for Medicaid can be terminated.

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