

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9205
)
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-seven-year-old man with an eighth grade education who has worked primarily, though sporadically, in the textile industry. As a "spinner" he was required to constantly lift spools weighing up to 30 pounds, a task which required him to use both hands.

2. The petitioner has a long history of chronic alcohol abuse and has been incarcerated numerous times for alcohol-related offenses. He has been treated unsuccessfully in the past and currently drinks twelve cans of beer per day.

3. The petitioner has not worked since April of 1987 when he says that arthritis in his shoulders and back made heavy lifting impossible. Clinical evaluations confirm that the petitioner suffers some diminution of range of motion in his back and pain upon exertion which limits him to occasional lifting of from 15-20 pounds at a time. He also experiences

intermittent pain from 1-2 times per week, particularly associated with weather changes. His sitting, standing and walking are unaffected by this condition.

4. In June of 1988, the petitioner suffered a serious fracture of the left arm as the result of a motorcycle accident. He underwent surgery to repair the fracture but has never recovered the use of the arm. Medical tests show atrophy and significant weakness in the left arm which prevents grasping, feeling or lifting with that limb. The petitioner experiences pain when his left arm is touched or bumped.

5. During the last year, the petitioner has developed abdominal pain accompanied by vomiting after eating. He has been unable to afford medical treatment and has self-medicated with over the counter drugs. He initially lost close to twenty-five pounds (weighing 116 lbs. at 5' 5 3/4") over his prior weight but has recently regained about eight of those pounds. Laboratory tests (blood and urinalysis) have been unable to either confirm or rule out any gastrointestinal disease. The consulting specialist has suggested that x-rays might be useful but DDS has apparently determined not to authorize those tests. Based on the information available, the petitioner's current probable diagnosis is alcoholic gastritis. The petitioner does suffer from some degree of pain due to abdominal cramping.

6. Based on a psychological evaluation performed on the petitioner, it is found that his functioning is in the upper limit of borderline intellectual abilities and that he has a personality disorder based on his long history of antisocial activity. These intellectual and personality deficits result in a moderately decreased ability to understand and remember detailed instructions and to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances. Otherwise, the petitioner appears to have no significant limitations based on his mental condition.

7. The petitioner contends that his back pain, abdominal pain and loss of left hand use are, in combination, totally disabling. However, the evidence shows that in spite of these problems, the petitioner who lives alone, is able to shop and cook for himself, care for his home, handle his affairs, sleep at night, continue his hobbies (fishing) and social activities (daily socializing with drinking partners). There is no indication that the petitioner is immobilized or bedridden by his pain or that his stamina and endurance are significantly affected by pain.

8. The petitioner's exertional limitations and loss of the use of his left hand prevent him from performing his prior work as a spinner.

9. The Department presented expert evidence that there were 332 jobs available for a worker with traits and

abilities gained as a spinner, who was limited to light work due to physical restrictions and who was limited due to alcoholism from performing under stress when confronted with critical decisions, in emergency situations or changing job duties. The expert presented computer data showing several industries in which some of those jobs might appear and analyzed four industries in which a total of 104 potential local (VT and NH) employers were found. The expert also matched the above factors with jobs which provided less training time and required below average intelligence, verbal, numerical, spatial, form perception, clerical perception, motor coordination, figure dexterity, manual dexterity, eye/hand/foot coordination and color discrimination abilities and found 33 jobs which occur in several industries with about 100 potential VT employers.

10. The vocational expert's computer search did not specifically take into account the petitioner's loss of his left hand as a factor in choosing jobs which he felt the petitioner could do. Although he had not prepared any testimony based on that deficit, he opined that there might be some jobs on his lists, such as a lens grinder and hook puller, which a one-armed person could do even though he had never personally observed persons performing those jobs and could not say how many of those jobs might actually exist in the local economy. Because of those serious flaws, the expert's testimony as to the existence of those jobs is unpersuasive and can be given no weight.

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.

The petitioner has met his burden of demonstrating that he can no longer do his former work, thereby shifting the burden to the Department to show that the petitioner has the residual functional capacity to perform "other work (jobs) which exists in significant numbers in the nation's economy." 20 C.F.R. § 416.960(b)(3) The regulations state that:

To do this, we consider your individual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country.) 20 C.F.R. § 416.961 See also 20 C.F.R. § 416.966(a)

Under the regulations, work exists for an individual in the national economy only when "there is a significant number of jobs (in one or more occupations) having

requirements which you are able to meet with your physical or mental abilities and vocational qualifications. 20

C.F.R. § 416.966(b)

The Department could not meet its burden of showing the existence of jobs through the Medical-Vocational guidelines ("the grid") because the petitioner has significant non-exertional impairments, including the loss of the use of one of his arms. See 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 200.00(e). Therefore, a vocational expert was called to testify. In testifying as to what jobs might be available for the petitioner, the Department's expert admittedly did not factor in all of the petitioner's impairments, particularly his loss of the use of one hand and, therefore, the job data he generated cannot be found to be relevant to the petitioner's residual functional capacity as found above. The expert's extemporaneous attempt to match one of the jobs with a one-handed person was less than convincing, because the expert had no actual first-hand knowledge of either of the jobs and could present no data as to the existence of those jobs in the national economy.

The Department has, therefore, failed to meet its burden of showing that there are other jobs in significant numbers in the economy which the petitioner, given his particular restrictions, can do. The petitioner must, therefore, be found to be disabled.

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