

4. The petitioner has been diagnosed as possibly suffering from early osteoarthritis based on intermittent daily pain in his right thigh and leg. He has been prescribed Naprosyn which generally relieves his pain and inflammation. This condition has not significantly interfered with the petitioner's physical abilities.

5. Based on the testimony of the petitioner and his employer, it is found that the petitioner performs a wide variety of physical tasks on the farm, and is relied upon to perform the most physically demanding chores, such as lifting 100 lb. feed bags. He performs these feats with no trouble except his legs start to tighten up after two hours of squatting to milk. The petitioner is able to understand and carry out simple to somewhat complex directions but fails in the swift execution of his tasks. He must be frequently prompted to complete tasks expeditiously and, in a day which typically lasts 12 - 14 hours, performs what would normally be expected in 6 hours. The only explanation the petitioner or his employer could offer for this slowness was a "personality" bent to work slowly. He is able to operate a chain saw and a tractor and is kept on at the farm because he is "dependable". The petitioner hunts, fishes and rides his snowmobile on his time off and undertakes these pursuits with uncharacteristic vigor. In general, the petitioner is friendly, well-liked and gets along with his supervisors and co-workers. He takes care of his personal needs and money, although his food and laundry is taken care

of as part of his compensation.

ORDER

The department's decision 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.

The petitioner argues that he should be found to be disabled because he is too "slow" to get a "regular" job. However, there is nothing in the evidence which proves that his "slowness" is the result of a medical impairment. To be sure, the petitioner is in the upper range of borderline mental retardation but his intellectual functioning is not so impaired that he cannot care for himself, understand and follow most instructions when he wants to, carry out normal social functioning and to sustain some consistent level of work performed for nine years. To be found disabled based on mental retardation, the petitioner's medical impairment must meet or equal the following regulations:

12.05 Mental Retardation and Autism

Mental retardation refers to a significantly

subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: the scores specified below refer to those obtained on the WAIS, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded; OR

B. A valid verbal, performance, or full scale IQ of 59 or less; OR

C. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function; OR

D. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism, gross deficits of social and communicative skills with 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 that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

20 C.F.R. § 404, Appendix I, Subpart A.

The petitioner has not met his burden of presenting evidence that his mental impairment presents equally severe restrictions on his ability to function. Therefore, the department's decision is affirmed.

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