

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9307  
 )  
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 48 year old man who has an eighth grade education and a 17 year work history in the construction trades (all with the same employer) where he did heavy work, frequently lifting from 75 to 100 pounds.

2. In May of 1983, the petitioner was hit in the back of the head and neck by a piece of lumber while on a construction job and was operated on for a ruptured disc in his neck twice in 1983. He has been unable, for medical reasons (a fact not disputed by DDS), to return to his former work. Sometime subsequent to his accident, the petitioner sought the help of Vocational Rehabilitation and retrained as a plumber's helper. During 1985 through 1987 he worked off and on in this occupation and as a janitor. His last job was as a plumber's helper in June of 1988. He left that job because he claims that cramps and arthritis in his hands, legs

and back made him unable to crawl into spaces or to hold tools and small fittings.

3. The credible evidence, including both the reports of his doctors and the petitioner's testimony, show that the petitioner has a number of medical problems, some of which are probably residuals from his accident, and others which have developed since then.

(A) Those injuries which are or are believed to be residuals of his accident are as follows:

i. Marked obliteration of the C6-7 discs in his cervical spine (post cervical fusion) which cause his neck to be stiff and limit his range of motion by about 25% in his back and 20% in his upper limbs (through radiation) and which cause burning and pain in his right shoulder. This problem continues in spite of two operations, medication and numerous physical therapy sessions.

ii. Bilateral carpal tunnel syndrome associated with ulnar neuropathy which causes intermittent numbness and tingling in his hands and prevents him from using his hands strenuously or in any repetitive way. He particularly cramps up when working with small objects. The petitioner currently uses splints and may have to undergo surgery.

iii. Seizures which are currently controlled by Dilantin but which prevent the petitioner from operating a motor vehicle in an occupation, working at heights or working with dangerous equipment. His last seizure was one year ago.

iv. Memory loss which has been tested and found to be below the third percentile for verbal memory. His loss especially affects his short term memory. The petitioner exhibited considerable difficulty answering questions at hearing regarding the specifics of his medical history and his daily routine.

(B) Problems the petitioner has developed since his accident include:

i. Inflammatory polyarthrititis affecting his fingers, feet, ankles, and especially his left knee and wrists which has been diagnosed both through diagnostic exams which show a moderately elevated sedimentation rate and through clinical observation of inflammation of and effusions in the joints. In spite of medication, the petitioner's joints continue to be actively inflamed and he experiences morning joint stiffness for 2 - 3 hours or greater on a daily basis and numbness in his extremities (feet and hands). He also cannot stand for more than one hour on intermittent days, cannot sit for longer than one hour without leg and back stiffness or walk more than 200 yards. His stiffness and neck problems also limit his lifting to about 40 pounds.

ii. Low back pain which limits his ability to stand, and in combination with his arthritis causes him to lie down once or twice per day for two hours at a time.  
and

iii. Asthma for which he is treated with medication and which restricts him from working around animals, smoke and dust.

4. The petitioner lives with his son and occasionally drives himself to doctor's appointments and to visit his children who live nearby. He prepares his meals and tries to help with the housework including dishes, vacuuming, and lawn raking in spurts of from 30 - 60 minutes, usually during the afternoon when he is not so stiff. He naps from 9:30 to noon and 1:30 to 4:00 on an average of three to four times per week when his arthritis is particularly acute, because on those days even sitting makes him tired.

5. The petitioner has discussed surgery for his carpal tunnel syndrome with his physician. However, there is no evidence at this point that the surgery has been recommended to him or that he would be significantly relieved by it. In any event, the petitioner has no money to pay for such an operation.

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.

It must be concluded that the petitioner is significantly limited by pain and numbness from performing basic work activities (sitting, standing, walking, reaching, feeling, using his hands and shoulders); is further limited with regard to performing some basic mental activities (remembering and carrying out simple instructions); and is also limited by his seizures to performing work only in non-hazardous occupations. The petitioner's combination of impairments, therefore, is found to equal or exceed the level of severity and duration found in the Listing of Impairments for inflammatory arthritis and disorders of the spine. 20 C.F.R. § 404, Subpart P, Appendix I, Part A, Rule 1.02 and 1.05. As his multiple impairments are medically equivalent to a listed impairment, the petitioner must be

found to be disabled. 20 C.F.R. § 404.1526(a).

# # #