

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9362
)
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 36 year old man who has a high school diploma and no work history other than a tour of duty with the Coast Guard from 1970 - 1973 during which he did heavy work on a cargo ship.

2. Shortly after his discharge from the Coast Guard, the petitioner fell 300 feet when a cliff he was walking on gave way, landed on his back and suffered numerous injuries, including a slipped disc and fracture of the right femur which resulted in his hospitalization in traction for 3 1/2 months and 2 1/2 months thereafter in a cast.

3. As a result of his injuries, the petitioner was permanently restricted from doing heavy and strenuous work, that is lifting more than forty pounds, running, or walking on snow and ice and was put on 100% V.A. disability which he continues to get. Six months after his accident he fell

down some steps because his knee would not bend.

4. As time went on, the petitioner began to experience increased pain in his right leg and knee for which he sought treatment in 1978. By 1980, he was diagnosed as suffering from aseptic necrosis of the right leg and a total hip replacement was performed.

5. The petitioner's current medical diagnosis is pain as a result of being eight years post total hip replacement and tendonitis of the shoulders.

6. Mechanically, the petitioner's medical conditions do not limit his range of motion except for some slight limitation in his ability to move his right hip which sometimes causes him to limp or his hip to lock. The petitioner still continues to have exertional limitations which restrict his ability to lift to 25 pounds frequently and 50 pounds maximally.

7. The petitioner, in spite of the operation, continues to experience a constant dull pain in the right leg, hip and back which affects his ability to stand, walk or sit for more than twenty minutes. For example, the petitioner cannot sit and eat a meal without developing pain in his back and hip which he alleviates by moving around. He has not been able to sit in a movie theatre and watch a movie for 16 years. The pain is worsened if he crouches or bends over. At least once per day he experiences a sharpening of the pain which lasts for a few minutes and

immobilizes him during that time and for some time afterwards.

8. The petitioner's tendonitis causes his shoulders and right arm down to his wrist to be in mild to moderate pain without exertion throughout the day and to cause sharp pain when he uses his arms or stays in one position too long.

9. The petitioner's pain interferes with his ability to sleep. He is awakened by pain an average of five to six times per night which limits him to four to five hours sleep per night and causes him to experience daytime fatigue which he relieves by afternoon naps or lying on the couch for two hours or so. Any activity which lasts more than 30 minutes is apt to exhaust the petitioner.

10. The petitioner takes prescription pain relievers (Darvon, Halcion) and muscle relaxers (Valium) on a daily basis with little relief. He also takes a prescription medication for mild depression associated with his physical restrictions.

11. The petitioner attempts to help with the household chores because his wife is disabled. However it takes him up to four hours to accomplish minor household tasks such as dishwashing due to his need to rest and change positions. He is unable to lift the vacuum cleaner or cooking pots. He drives six miles round trip out of necessity once per week to shop and take his wife to doctor's appointments, which trip he finds uncomfortable. He limits his driving whenever

he can.

12. Due to his pain and fatigue the petitioner no longer runs, hikes or swims as he used to do. His social activities are limited. Both the petitioner and his wife, who testified on his behalf, are found to be credible and sincere witnesses.

13. The petitioner's treating physician at the V.A. hopes to control his pain through "medication and modification of activity" but at present agrees that his pain "probably" prevents him from performing any substantial gainful activity indefinitely and "possibly permanently".

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 credible evidence shows that the petitioner is unable to sustain any of the functions generally needed to perform any kind of work activity due to chronic pain and fatigue. His ability to sit, stand, walk, bend, crouch and

use his arms is restricted to only short periods due to pain. His related fatigue prevents him from sustaining any activity, even purely mental, for a six to eight hour day. Therefore, it must be concluded that the petitioner has no residual functional abilities which would enable him to obtain any type of employment. Based on his doctor's opinion, it must be concluded that this situation has and will continue to last for at least 12 months. Therefore, the criteria for eligibility are met.

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