STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 9382
	)	
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

The petitioner is a sixty-five-year-old woman[1] with a G.E.D. In the 1970's and 1980's she worked in the kitchen in a college dining room and as an assembler in a furniture factory. Both jobs entailed the constant use of her hands and arms as well as frequent lifting of over twenty-five pounds. Her last job was as a caretaker for a disabled person. This job also entailed heavy lifting. She last worked in February, 1989.

In late February, 1989, the petitioner injured her right arm when a door swung shut striking her on the elbow. This resulted in the petitioner losing sensation in her thumb and fingers. A neurologist described the petitioner's problem as "radial nerve palsy" and prescribed physical therapy and the wearing of a brace on her hand and wrist.

On July 30, 1989, the petitioner was again examined by

the neurologist, who described her condition as "much improved". In evaluating the petitioner's residual functional capacity, the neurologist noted limitations in lifting ("right arm weakness") and manipulation of right hand and fingers. He opined that the petitioner could not lift fifty pounds but, noting the petitioner's improvement, stated: "Doubt disability will last 12 months--but possible."

The petitioner testified that she continued wearing her brace for several months but that, while improving the feeling and manipulation of her fingers, it actually worsened her control of her right thumb. She stated that she never regained strength and control over her thumb, and that this has prevented her from lifting objects and performing manual tasks with her right hand.

The petitioner was again seen by her neurologist in April, 1990. The petitioner's thumb problem was diagnosed as arthritic in origin. In a letter to the petitioner's attorney, the neurologist wrote:

> "I am writing regarding [Petitioner] and responding to your March 29, letter.
> I saw her in follow-up on 4/18/90.
>
> SUBJECTIVE: Indeed, the patient's symptoms of radial nerve palsy disappeared shortly after I last saw her and she has had a very good response with no recurrence from that.
>
> Instead, her complaint is that she has a sore thumb. She states that when she grabs objects, the right thumb hurts, it "pops" occasionally, and she has a difficult time controlling it. There is no allegation of numbness, weakness, etc.
>
> OBJECTIVE: On exam, indeed her radial nerve

> function is entirely normal, and I find no residual neurological disability with respect to that. This is very much in line with my last review of her case, when I wrote that she had excellent resolution by 6/30/89, and indeed recovery of that was good with no residual disability. However, the patient developed some time after that, a different, unrelated problem of some arthritic soreness and pain at the base of her thumb which is non-neurologic in origin. This has precluded her from working.
>
> ASSESSMENT/PLAN: To the extent that these two problems "dovetailed", she did have continuous disability for 12 months. However, I emphasize that the latest problem is not neurological. She has seen Dr. Harrington before, and I have advised her to see him again for therapy regarding this condition. He might give you a somewhat more expert opinion as to the degree of disability resulting from this particular complaint."

The issue in this case is whether the petitioner's hand problems were continuous for 12 months and prevented the petitioner from returning to her past jobs. It is found, based on the uncontroverted medical evidence and the credible testimony of the petitioner, that since February, 1989, the petitioner has been continually unable to use her right hand to engage in heavy lifting (over 25 pounds), grasping, and fine motor manipulation. These limitations have precluded the petitioner from performing any of her past jobs as she described them.

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.

As found above, the petitioner in this case has been precluded from performing her past work and any other job entailing lifting over twenty-five pounds (i.e., "medium work" as defined by 20 C.F.R. э 416.967(c)) for a continuous period beginning in late February, 1989. Since there is no allegation or indication that the petitioner has "highly marketable" job skills, the regulations dictate that she be found disabled. 20 C.F.R. э 416.963(d). The Department's decision is, therefore, reversed.

FOOTNOTES

[1]The petitioner turned sixty-five in February 1990, and became eligible for Medicaid on this basis at that time. This case concerns the "closed period" of February, 1989, through February, 1990. See Brown v Department of Social Welfare, VT Supreme Court Docket No. 88-187, Decided December 15, 1989.

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