

his family. He had a stress test, which is a routine procedure, after his catheterization and this showed that there was evidence that there was still some muscle alive in the area where his heart attack had occurred and because of this along with some atypical chest pain, he had a balloon angioplasty performed with the hope that further heart damage could be avoided. The balloon procedure was successful but his stress test remained the same and since that time he continues to have chest discomfort despite the fact that there are no clear anatomic reasons for true angina.

He has been entered into our cardiac rehabilitation program and despite the fact that his exercise tolerance on a maximum stress test is reasonably well preserved, we have been unable to get him to exercise up to what we would expect for someone with this type of heart attack. In addition [petitioner] has had many pains of which we are not sure the cause, none of which seem to be angina. He has not progressed in the program as well as all the older patients who have had similar heart attacks and at times has been depressed and seems unmotivated and afraid. I think that emotional factors more than true medical factors are preventing him from being able to function and to make improvement in his exercise tolerance and general outlook.

I have delayed writing this letter because I am not anxious for [petitioner] to get on permanent disability as I have hopes that he will be able to return to a productive existence in the future. However he really has made no progress in the five months since his heart attack despite the fact that he has been involved in an excellent cardiac rehabilitation program with some highly motivated nurses who care for [petitioner]. I think it is very important that [petitioner] stay in a cardiac rehabilitation program where he gets guidance and encouragement as I think he needs pushing to maximize his condition. Nevertheless at the present time I do think [petitioner] is incapable of working both because of psychological factors and because of poor physical conditioning that go hand in hand. I do suspect his disability will be prolonged much more than the average heart attack patient because of these problems and I do not think that a year is unreasonable. He has had a large heart attack and due to both physical and I believe psychological reasons has not been able to make any progress yet in improving his physical status or becoming more independent.

Following receipt of the above report, the hearing officer requested, and the parties agreed, that the petitioner undergo a consultative psychiatric evaluation. This occurred in February, 1990. The psychiatrist's report includes the following "diagnosis" and "formulation":

DIAGNOSIS: Adjustment disorder with mixed disturbance of emotions. 309.28

FORMULATION: There is no evidence that the applicant is now or ever has been psychotic. He gave a history of being a well adjusted individual until May 1989 when he began to have a heart condition. He has an adjustment disorder characteristic of anxiety, depression and fatigue. It would appear that this adjustment disorder is highly secondary to his medical problems. This examiner is at a disadvantage because he is not in possession of any of his medical records. From the psychiatric point of view, it is clear the applicant is not psychiatrically impaired from being gainfully employed.

In addition to the above, the petitioner submitted the following report from a psychotherapist who has been providing counseling to the petitioner since October, 1989:

"[Petitioner] has been a patient of our agency since October 17, 1989. He referred himself here on his own free will, requesting services which centered on increased feelings of depression and anxiety as a result of his health condition, financial problems, and the ongoing uncertainty about his ability to work and to form relationships. [Petitioner] has been regular and consistent in keeping his psychotherapy appointments. [Petitioner] had expressed concern about his financial obligations which he acquired as a result of hospital and doctors fees. As you know, these fees are considerable and because of his heart disease he is uncertain as to whether or not he will be able to pay off these debts in a timely fashion.

[Petitioner's] depression and anxiety concerning these problems have interfered with his sleep habits and presently, in consultation with Dr. K, we have placed him on antidepressant medication. Although he continues to remain depressed, he has gotten some relief for his sleep disturbance which I think is a positive sign. We plan to work with [Petitioner]

closely both in monitoring his medication and to encourage him to continue his outpatient psychotherapy. We are hoping that [Petitioner] can get some assistance for his medical debts which I think would help him start to plan more realistically for his future which would hopefully include developing a vocational goal in which he could ultimately become more self-sufficient."

At the hearing, the petitioner appeared to be an intelligent and sincere individual. He stated that he had returned to working part-time at the general store where he was last employed, but that his employer was very accommodating in terms of tasks required of the petitioner and of being flexible with the petitioner's hours.

Following the testimony, the hearing officer advised the petitioner to submit a statement from his treating therapist that specifically addressed the petitioner's psychological problems vis-a-vis his ability to work (the hearing officer deeming the above-cited report deficient in this respect). The petitioner was further advised that negative inferences could be drawn if the petitioner, without a showing of cause, failed to obtain this report. By letter dated May 2, 1990, the petitioner, through counsel (without explanation or elaboration), informed the hearing officer that no further evidence would be submitted.

Based on all the above, it cannot be concluded that the petitioner would be precluded from performing all work activity for a continuous 12 month period. Despite the opinion of his cardiac therapist, the medical evidence strongly indicates that the petitioner's primary problems-- at least in terms of returning to work--are motivational,

not medical. Given the petitioner's youth, his relatively high level of education, and his ample work experience, it must be found that the petitioner can reasonably be expected to be able to perform a wide range of sedentary work.

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.

In this case, the evidence does not establish a sufficient medical basis to any claim by the petitioner that he cannot perform at least "sedentary" work. See 20 C.F.R.

§ 416.967(a). Even if none of the petitioner's past jobs entailed minimal exertion (although it appears that some of them did) it would have to be concluded that there are many other jobs that the petitioner can perform. See 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.29. The department's decision is affirmed.

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