

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9509
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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

1. The petitioner is a fifty-year-old woman with a 7th grade education. At one point she attempted to obtain a G.E.D. but was unsuccessful. DDS has found that she has no "relevant" work experience, although she is currently employed on a part-time basis at a laundromat.

2. The petitioner has worked at the laundromat for two years where her duties consist of opening the facility at 5:30 a.m., wiping out the machines, taking out the garbage which consists of empty laundry detergent boxes, and vacuuming the rugs with a pull-around vacuum cleaner. She does the clean-up activities for about thirty minutes at mid-morning and mid-afternoon, and closes up the laundromat after 8:00 p.m. Between her duties, the petitioner rests or naps at her home nearby (a 10-minute walk) because she experiences exhaustion, pain in her back, knees and feet and headaches. Heavy mopping

and clean-up chores at the laundromat are performed by the petitioner's daughter. The petitioner is paid about \$50.00 every two weeks for fifteen hours of work. The petitioner feels she is doing the maximum amount of work possible given her health limitations.

3. The petitioner has degenerative joint disease in her hips, knees, spine and fingers as evidenced by laboratory tests (including a "positive ANA", indicating an elevated level of antinuclear antibodies), and x-rays showing some mild wedging deformities of the spine and minimal narrowing of the medial joint compartment of the knees. She has not lost any range of motion but is rather limited by her complaints of pain and occasional joint swelling. She has been advised to rest, do exercises stretching her lumbar musculature, and has been prescribed an analgesic called Dolobid. Her pain is exacerbated by fifty pounds of extra weight she is carrying but which she has tried with some success to lose.

4. The petitioner experiences simple migraine headaches which she treats with over the counter medications and which occur one to two times per week, lasting for from thirty minutes to all day. She also has tinnitus in her left ear and some bilateral hearing loss.

5. It is her treating physician's opinion that the petitioner's various medical conditions, but primarily osteoarthritis, causes significant pain and stiffness after

a half hour of sitting or standing for more than five minutes. She cannot perform her exercises due to back and leg pain and analgesics have been ineffective in relieving her pain. He states she "is presently working part-time at a laundromat which is probably all she can handle at present", and that her condition is likely to last more than one year. As this opinion is not controverted by substantial evidence, it is adopted as a factual finding.

ORDER

The Department's decision is be 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.

Although the petitioner is currently working part-time, her 7-8 hour per week employment from which she earns only \$100.00 per month, coupled with her need for considerable rest periods between tasks, does not meet the definition of substantial gainful activity found at 20 C.F.R. § 416. 972-976. Therefore, it must be determined whether the

petitioner is disabled because she has an impairment or combination of impairments which limit her ability to do basic work activities considering her age, education and past work experiences. 20 C.F.R. § 416.920(f).

Under Social Security's Medical Vocational Guidelines, a person who is "closely approaching advanced age", (50-54), has less than a high school education, and an unskilled work history, is considered to be capable of substantial and gainful activity only if he or she is able to perform at least the full range of "light work". 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 202.10. The regulations define light work as follows:

(b) Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 416.967

The evidence shows that the petitioner cannot stand without considerable pain for more than five minutes or sit for more than half an hour without pain. In addition, given her inability to do any mopping or work heavier than wiping out a machine or vacuuming a rug at her job, it is reasonable to assume that she could not regularly lift

objects that weigh as much as ten pounds. As such, it must be concluded that the petitioner is, at best, capable of sedentary work and, therefore, she must be found to be disabled under the guidelines. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.09.

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