

knot on a log, fracturing two of his ribs and puncturing an internal artery. He developed a hemothorax for which he was hospitalized and a chest tube was surgically implanted on the right side. These problems eventually resolved themselves.

3. During his hospital stay of ten days, the petitioner was found to be suffering as well from mild COPD, characterized by shortness of breath, and a heart murmur which after x-rays was determined to be of no critical significance. The petitioner's disabling bilateral hip pain was thought to be osteoarthritis, but x-rays ruled out that diagnosis.

4. After his hospitalization, the petitioner continued to experience severe low back and hip pain which radiated down his legs. When his physician's conservative therapies failed to help him, he was referred for a CAT scan which showed that he has "significant lumbar spinal stenosis". Because of that problem and its attendant pain, the petitioner is prevented from prolonged walking, standing and sitting and from lifting or carrying heavy objects and from stooping and bending.

5. The petitioner's back problem is not amenable to either pharmaceutical or physical therapy and there is no chance that it will be spontaneously resolved. There is a chance that the petitioner's pain may be relieved and his function restored through surgery but he has not been able to afford the tests he needs (a myelogram, for one) to

determine whether surgery is a reasonable option for him.

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.

Under the Social Security regulations which make presumptive findings regarding disability ("the grid"), a person with the petitioner's "limited" (less than high school) education, "unskilled" work experience, and age which is very "closely approaching advanced age" (55), is disabled automatically unless he has the residual functional capacity to perform at least "light work". 20 C.F.R. § 404, Subpart P, Appendix II, Rules 201.09 and 202.10.

"Light work" is defined in the regulations as work which:

. . . 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(b).

The medical evidence shows that the petitioner can neither bend nor lift weight of any kind nor do a good deal of walking or standing nor sit for prolonged periods. As such, it must be concluded that his work capability is something less than that required for "light work" and he must as a matter of law be found to be "disabled".

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