

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9631
)
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 57-year-old woman who has a high school education and who has worked as a nurse's aide for almost 35 years. As a nurse's aide she was required to stand or walk during 7 of her 8 hours of daily work, and lift 50 pounds and more, including patients.

2. The petitioner suffers from diabetes, chronic bronchitis, chronic obstructive pulmonary disease, hypertension (controlled through medication) and obesity. In 1987, the petitioner felt that the constant walking and heavy lifting was becoming too difficult due to her age and combination of health problems. In October of 1987, she took a job as a software labeler to get some relief from the physical requirements of her former job but eventually found that the lifting (over 100 pounds), bending and time on her feet were more difficult for her than her prior job. In

September of 1989, she returned to nurse's aide work on a part-time basis.

3. In late September of 1989, the petitioner punctured her great right toe which resulted in an ulcer of the foot and infection diagnosed as "severe diabetic cellulitis". The petitioner tried to treat the problem herself to no avail and was eventually hospitalized on October 18, 1989, due to the infection which had become gangrenous. After 10 days of hospitalization and more than two months of diligent and intensive antibiotic management and local wound care, the petitioner was able to avoid amputation of her toe. By late November of 1989, the petitioner's wound had healed over and there were no further signs of infection.

4. Although the infection is gone and the opening healed, the petitioner continues to experience limited sensation and balance in her foot. She runs a high risk of further injury because she has no protective pain response in her right toes. She has been further restricted from wearing shoes and standing or walking for long periods of time because of the likelihood that her foot will split open again at the site of the wound. These restrictions will most likely continue through at least October of 1990. In addition, the petitioner's combination of medical impairments restrict her to lifting less than 10 pounds and to climbing, stooping, kneeling, crouching and crawling only

occasionally.

5. The petitioner's condition prevents her from returning to her past work as either a nurse's aide or a labeler through at least October of 1990.

ORDER

The decision of the department 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 petitioner has met her burden of showing that she cannot perform her usual occupation for at least one year and that during that time her condition would only allow her, at best, to perform some sort of "sedentary work".¹ As a high school graduate of "advanced age", with no skills which could be transferred to sedentary occupations, the Social Security "grid" regulations dictate that the petitioner be found automatically "disabled". 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.12. Therefore, she meets the eligibility requirements for Medicaid.

FOOTNOTES

¹Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 C.F.R. § 416.967(a).

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