

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9640
)
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 44-year-old woman who has completed high school and 12 credits in drafting at a community college. She also has a certificate from a homestudy course she took some years ago. The petitioner has worked since the age of 18, the last 16 years of which she did benchwork in a medical products factory. During most of the time at the factory, her job involved making catheters and required constant standing, reaching, bending and some walking. In her job she was constantly exposed to chemicals and glues.

2. In the early 1980's, some 10 years or so after she began her benchwork job, the petitioner began experiencing low back pain and neck, shoulder and arm pain. She also developed headaches and allergies and suffered from frequent respiratory infections. She was treated by her doctor over the years for

these problems with various analgesics and antibiotics but her neck and arm pain continued to worsen. By June of 1988, the petitioner was unable to perform her job due to pain in her neck, shoulders and arms and she was referred by her physician to a neurological surgeon who determined that she had spondylosis in her neck for which she underwent a disectomy and cervical laminectomy operation in November of 1988.

3. The petitioner had a good recovery from the surgery and was released to return to work in February of 1989. She was placed in a different job at the factory which required her to sit and operate foot pedals all day. However, after a few weeks, the petitioner's neck pain returned. She was examined by her surgeon who found the range of motion in her neck to be restricted and who noted that her type of work seemed to contribute to the problem. Physical therapy and ultrasound treatments were of no avail.

4. By June of 1989, the petitioner felt she could no longer continue with her work due to chronic pain in her neck and shoulders, low back pain and headache and sinusitis problems which she associated with fumes in the plant. Since that time the petitioner's activities have been significantly curtailed by pain. She does light housework and sewing activities in 10 - 20 minute spurts with frequent rests in between. She needs to change positions frequently and loses sleep due to pain in spite of taking regular (every 6 hours) prescription analgesics (Tylenol with

codeine). She finds tasks calling for grasping and holding (including driving) and repetitive use of her hands especially difficult. In addition, she continues to suffer intermittent (every 3 - 4 weeks) migraine headaches which are somewhat controlled with medication. She now takes shots to control her sinusitis and respiratory distress.

5. The medical evidence (from both petitioner's treating physician and DDS's examining consultant) shows that the petitioner experiences persistent pain in her neck and back radiating into her arms and legs (and may have a second herniated disc in her lower back which has not been confirmed by tests); sinusitis with frequent respiratory infections and migraine headaches. As the petitioner has no history of tobacco or alcohol use or trauma to her back, her problems are suspected to have been a result of 16 year's worth of repetitive motions at the factory and constant exposure to chemicals and fumes, although the petitioner has been unsuccessful in her efforts to get worker's compensation.

6. The petitioner's treating physician has described her as a slow moving person who is depressed and discouraged by her situation but who wants to work and who possibly may be helped by further physical therapy and a specific diagnosis of her back pain. It was his opinion that her various medical problems limit her range of motion in her neck and shoulders and "markedly" limit her arm strength to the point she can lift less than 10 pounds, cannot push or

pull with either her arms or her legs, cannot reach with and has a reduced grip strength in her right arm. She is, according to her physician, unable to perform repetitive motions or forced grasping including such relatively non-exertional activities as typing. Due to low back pain she needs to alternate sitting and standing hourly and is restricted to 4 hours of sitting, 2 of standing and 1 of walking each day. It was also his opinion that she needs to limit her exposure to environmental hazards such as solvents. Because his opinion is consistent with the medical and other evidence and is uncontroverted by any physician who has examined the petitioner, the above restrictions are adopted as facts in this matter.

7. DDS has found, and that finding is adopted as being supported by the evidence, that the petitioner can no longer perform her prior employment due to her functional restrictions.

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.

Because of the significant restrictions involving carrying, lifting, walking, standing, and pushing and pulling leg controls, the petitioner's ability to physically exert herself can at best be classified as being in the "sedentary" range:

Sedentary 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 it is often necessary in carrying out 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).

If the petitioner were able to perform the full range of sedentary duties as set forth above, she would be labeled as "not disabled" by the Medical Vocational Guidelines because she is a "younger individuals". See 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.27. The regulations go on to say:

However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work
. . .

Since the inability to perform jobs requiring bilateral manual dexterity significantly compromise the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate.
20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.00(h).

The petitioner's ability to use her right arm and hand is markedly restricted by pain and weakness resulting from her disc problems to the point that her ability to perform the full range of sedentary work is similarly significantly compromised. Her ability to perform in this range is also significantly affected by her need to avoid exposure to fumes, and to sit more than four hours per day. Therefore, as the regulations direct, the petitioner is found to be disabled.

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