



as primarily operating the grill (eggs, hamburgers, etc.) in a diner. Her employer was highly tolerant of her physical problems and allowed the petitioner to sit down and rest whenever she felt it necessary--which was at least hourly. At times, the employer would even take over the petitioner's duties for up to a 1/2 hour at a time if the petitioner was not feeling well. The petitioner was also not expected to do any heavy lifting. Business at the diner was slow and the petitioner was rarely if ever taxed. The diner closed in January, 1989, and has not reopened. The petitioner has not worked since that time.

The petitioner's "past work" as she described the diner job appears to have been highly accommodating to her individual impairments, and cannot be considered "relevant past work" to which the petitioner could return.<sup>1</sup> Her impairments as documented in the medical evidence clearly preclude her working as a "cook" as that job is usually and customarily performed in the competitive marketplace. At most, her residual functional capacity would be for "sedentary" work (see infra).

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.

In addition to the above the regulations provide that a person of the petitioner's age, education, and work experience who is limited to unskilled "sedentary" work as defined by 20 C.F.R. § 416.967(a) must be considered disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.01.<sup>2</sup> Since uncontroverted medical evidence establishes that the petitioner is so limited, the department's decision is reversed.

FOOTNOTES

<sup>1</sup>See 20 C.F.R. § 416.965.

<sup>2</sup>Even if it could be found that the petitioner is capable of "light" work (see 20 C.F.R. § 416.967(b)), the regulations dictate a finding of disabled. id, Rule 202.01.

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