

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9668
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Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his 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 man with a 10th grade education. Prior to August 1, 1989, he was self-employed for over fifteen years as a general purpose carpenter. His employment required heavy lifting of materials required for sheet rocking and roof repair.

2. The petitioner has suffered from chronic and acute colitis since at least 1985, for which he has been treated with varying degrees of success. He is presently somewhat controlled on Prednisone and Asocal which he takes on a daily basis. Nevertheless, he experiences diarrhea and cramping which exhausts him at least one day per week and often two to three days. In addition, because Prednisone is a drug which has serious side-effects on long term use, his dosage is frequently decreased. During periods in which he is tapered off his medicine, he has experienced acute flare-ups which

debilitate him for several days at a time. He has been seen and maintained on a monthly basis for these problems for several years.

3. While he was working in his self-employment, the petitioner worked during hours he was not sick and made sure he worked near a bathroom. In 1988, he earned a total of \$5,000.00 (at \$8.00 per hour) as a carpenter. In 1989, he earned \$3,200.00.

4. In early August of 1989, the petitioner began experiencing acute pain and coolness in the fingers in his left hand, which is his dominant hand. He was diagnosed as having an arterial occlusion in his left hand with gangrene, a condition also known as "hpyothenar-hammer syndrome". This condition developed as a result of repeated hammering with his left hand. Surgery was performed and a bypass was constructed to get blood to his fingers. While his surgical wounds have healed and he can now use his left hand, he has been advised to avoid repeated motions with his hand to prevent another thrombosis. He is permanently restricted to performing only light work with that hand.

5. DDS has found, which finding is adopted here, that the petitioner can no longer perform his prior work because he is precluded from heavy lifting.

6. The petitioner has severely curtailed his activities due to colitis. He does not go out in public except for weekly visits with his parents. He is cared for

by his wife who lives with him. He has difficulty sleeping due to stomach cramps and diarrhea.

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.

The petitioner has met his burden of showing that he has an impairment or combination of impairments which prevents him from performing his past relevant work. The burden now shifts to the Department to show that he has the residual functional capacity to do other work. The Department relies on Vocational Rule 203.18 of the Medical-Vocational Guidelines "the grids" to find that the petitioner, as a fifty-year-old unskilled laborer with less than a high school education is not disabled because he can perform "medium work" 20 C.F.R. § 404 Subpart P, Appendix 2.

The Department's reliance on that regulation is unfounded because the evidence shows that the petitioner is, at best, capable of light work, but more importantly, because the evidence also shows that the petitioner has a significant non-exertional impairment--exhaustion and weakness due to colitis--which makes use of the "grid" regulations inappropriate. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 200.00 (e).

The evidence shows that even before the petitioner developed problems with his left hand, his ability to work a full week was considerably compromised. Although he worked full-time when he was able, in 1989 the petitioner's income averaged less on a monthly basis than the amount which the Social Security regulations define as representing substantial gainful activity. See 20 C.F.R. § 416.974 (b).

As he was self-employed, the petitioner was able to control his hours and to continue to work at the times and under the conditions that were warranted by the current state of his colitis. It is difficult to imagine what kind of light work employment (or employer) could accommodate such erratic work availability.

Although the Department has not met its burden, and appears as a matter of common sense to be unable to do so, the hearing officer would recommend a remand on the issue of other work if the Department can make an offer of proof that there are jobs involving light work in the economy for a fifty-year-old man with an unskilled work history and

limited education, which employment can accommodate weekly absence of from one to two days due to illness.

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