

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9771
)
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

The petitioner is a forty-six-year-old woman with a tenth-grade education. Some years ago she worked seven months as a factory machine operator. Now she works as a substitute school crossing guard.¹

The petitioner suffers from chronic pain in her neck and shoulders and in her right knee. She states she is unable to use her hands and arms for any length of time and cannot stand or sit too long without developing neck and shoulder pain. Much of her day is spent in a reclining chair. She finds she must rest this way after a few minutes of housework.

The petitioner has been seeing an orthopedist for several years. She has been diagnosed as having cervical spondylosis, cervical disc disease, and osteoarthritis in her knee. From the orthopedist's office notes through 1990, and from a letter to the petitioner's attorney dated May 3, 1991 however, it is

clear that he felt the petitioner's complaints were somewhat exaggerated. A neurological examination performed in May 1989, also raised the question of the petitioner exaggerating her symptoms.

However, in an office note dated May 13, 1992, the petitioner's orthopedist noted:

The patient feels that she simply is not able to work. About all she can really do is sit in a chair supporting her right arm. She does admit that perhaps she could answer a telephone if such a job was available but beyond that she feels that from a practical point of view she is not able to work. Does this mean she is totally disabled? Probably from a practical point of view it probable does although probably not from a medical point of view.

The patient's major problem is her right upper limb. We again find no neurological deficit. I do not feel she has a neurological problem, however, she has a catching in the right shoulder with pain and she acts like she has an impingement syndrome of the right shoulder. She also complains about her right knee. She has some patella femoral catching. There is no evidence of instability or swelling.

An x-ray of the right shoulder looks normal. An x-ray of the right knee, not weight-bearing, does show narrowing of the medial compartment and also some spurring from the lateral femoral condyle. At some time in the future we should obtain a weight-bearing x-ray of the right knee.

IMPRESSIONS: Probable impingement syndrome, right shoulder Patella femoral pain, right knee.

In the meantime, I think from a practical point of view the patient is totally disabled. I am not clear in my mind as to when this disability actually began but it would appear to have been perhaps in October '88 when she presented in this office with right arm pain.

In June, 1991, the orthopedist referred the petitioner

to a psychiatrist,² who in turn referred her to a rheumatologist. In a letter to the petitioner's attorney, dated December 30, 1991, the rheumatologist stated:

I've only seen [petitioner] on one occasion and do not feel that I can accurately complete the physical capacity evaluation form. If this is necessary for her case, I would suggest that she be specifically tested in a facility that has such equipment, such as a physical therapy department.

As you will recall from my note of 7/22/91, degenerative changes at the cervical spine and knees were noted on physical exam, as well as x-ray studies. At the time of my evaluation, I did feel that her symptoms were consistent with these finds.

Considering the most recent medical reports (supra) and the petitioner's testimony and demeanor at the hearing, the petitioner's complaints of pain and physical limitations cannot be discredited. Given her inability to sit, stand, or do any manual activity for more than a few minutes at a time,³ it is found that she is unable to perform any substantial gainful activity.

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.

Based on the most recent medical assessments of the petitioner, and the fact that she appeared to be credible in her complaints of pain and limitations, it must be concluded that the petitioner meets the above definition. Therefore, the Department's decision is reversed.

FOOTNOTES

¹The petitioner stated she works as a crossing guard one or two days a week for about an hour each shift (A.M. and P.M). The Department does not contend that this work constitutes substantial gainful activity. See 20 C.F.R. § 416.974.

²There is no report from the psychiatrist in the medical record.

³The one hour of standing the petitioner does a few times a week at her job as a crossing guard appears to be about the limit of her physical ability in this regard.

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