

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9790  
 )  
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 sixty-year-old-man with a high school education who has worked as a carpenter for over twenty-five years and who is now self-employed in that occupation. He also worked as a chef for five years.

2. The petitioner customarily worked 8-10 hour days for 5 1/2 days per week. Due to progressive pain and stiffness in his shoulders, he cut back to 6-8 hours two years ago, and by November of 1989, was working only five hours per day, when he could work. In 1989, he was able to work a total of 390 hours and his IRS form showed that he had no net income after his expenses were deducted from his earnings.

3. In November of 1989, the petitioner was diagnosed as having diabetes and was prescribed a medication which did control his blood sugar level. However, his symptoms, including aching and stiffness in his shoulders, forearms, and

particularly in his hands, continued as well as numbness and clumsiness in his feet and stiffness in both knees. A physical exam in December of 1989 revealed the following:

He has strong femoral pulses. He has strong carotid pulses without bruit and he has strong DP and PT pulses on both legs. He has no peripheral edema. The skin below the knee is shiny. There is no hair growth below the upper calf on both legs. The feet are a bit cool to the touch, but capillary refill is brisk. On musculoskeletal examination, his head has full range of motion. His arms have full range of motion at the elbows. He can make a good grasp with both hands. There is somewhat limited flexion and extension at both wrists. The shoulders have essentially full range of motion, although, with the right shoulder, he has trouble getting his hand behind his head or reaching his hand up behind his back. I do not detect rigidity or cogwheeling. There is good musculature in the forearms. There is a bit of muscle wasting in the hands. Grip strength is normal. I did not examine the spine or lower extremities in any detail.

Neurological examination: He has moderately diminished vibration sense and position sense and light touch sense in the feet. KJ, + 1 and equal, AJ, absent. Babinski signs are plantar.

His gait is normal. His mental status is normal, and his face is symmetric.

The physician concluded:

ASSESSMENT

[Petitioner] has been a hard working man his entire life, and clearly is troubled by the loss of his ability to work at full capacity. I wonder whether he has a syndrome resembling arthritis which occurs sometimes in diabetics which appear to have something to do with soft tissue or ligamentous stiffening. I have explained to him that this occurs sometimes, and that it is possible he would improve somewhat with treatment of his diabetes. On the other hand, this might simply represent a "overuse syndrome". He does not have overt evidence of advanced arthritis or deformities, but he certainly could have a degree of DJD and some degree of diffuse soft tissue pain. It seems clear to me that he is not able to work a full time job on the basis of his description of his

symptoms. He does report that he can lift without trouble, that he can bend without trouble, but that the main limitation is the use of his arms for any period of time. He gives the example of hammering or holding a paint brush, when the hammer or paint brush will simply fall out of his hands after he has used them for awhile.

I pointed out to him that there was a low possibility that he had a specific diagnosable disorder, such as, PMR or hypothyroidism, and that my suspicion of this was low enough that I did not think we should pursue a lot of laboratory tests, especially in light of the fact that he has no health insurance and will be paying for any tests out of his pocket.

I raised the possibility of his consulting vocational rehabilitation, both for the purpose of getting some advice regarding employment options and with the possibility that he might get some financial help with more of a medical evaluation. I have dictated a copy of this note directly to the Vermont State Disability Determination Board, since [petitioner] is applying for disability since he finds he cannot support himself fully on the amount of work that he is doing at present.

4. As the petitioner's condition continued to deteriorate, he saw a neurologist at the VA in May of 1990, who diagnosed him as having "diabetic polyneuropathy of moderate severity" based upon his physical examination which showed a sensory loss and weakness in his hands and feet with a loss of bimanual dexterity. He found a slight atrophy and moderate weakness of the muscles in the hands and in the feet. He also noted a marked loss of sensitivity to vibration in the fingers and below the knees, a moderate loss of pinprick sensation and a marked loss of touch in those same areas. Although his laboratory tests have not documented any acidosis, his physician characterized his condition as representing a significant and persistent disorganization of motor function in two extremities which

results in substantial disturbance of gross and dextrous movements, or gait and station.

5. At the time of his hearing, the petitioner was still doing carpentry work in spurts of 2 1/2-3 hours each, from 2-4 days per week. By the end of a three hour work session, he has to use two hands to drive in the hammer. After a work session, his hands burn and are frequently stiff even into the next day. He is able to lift heavy weights but cannot hold on to them. During the first seven months of 1990 he worked a total of 103 hours and earned about \$1,245.00 before expenses.

ORDER

The Department's decision is reversed.<sup>1</sup>

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.

While the petitioner is currently employed, it must be concluded that the few hours he is able to work and the money he earns is neither substantial nor gainful as

described in the pertinent regulations. 20 C.F.R. §§ 416.974 and 416.975.

Therefore, it must be determined if he can work based on medical factors. The uncontroverted medical evidence in this matter shows that the petitioner meets the listing of impairments for Diabetes Mellitis because he has:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in substantial disturbance of gross and dexterous movements, or gait and station;<sup>2</sup>

. . .

20 C.F.R. § 404, Subpart P,  
Appendix 1, Rule 9.08

As the petitioner has shown that his impairment meets the listings, it must be found that he is disabled.

FOOTNOTES

<sup>1</sup>After hearing, the Commissioner notified the petitioner that she was reversing DDS's decision for the period from November 2, 1989 to April 25, 1990, the later date being the date on which the Social Security Administration allegedly denied the petitioner's application. The petitioner stated, however, that he was denied only on reconsideration and had not yet had a hearing. Therefore, he asked the Board to make a decision in this matter.

<sup>2</sup>20 C.F.R. § 404, Subpart P, Appendix 1, Rule 11.00C further describes motor function disorganization as follows:

C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combination, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of the fingers, hands and arms.

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