

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9861
)
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 thirty-three year old woman who has completed high school and one and a half years of college.

She worked on a continual basis from 1977 until 1990 at various positions including bookkeeper, store clerk, cashier, and restaurant supervisor. Until February of 1990, she worked full-time as a traffic director at a radio station and part-time as a disc jockey.

2. The petitioner has had a depressive disorder since she was a teenager and has been treated off and on during her life by means of psycho- and pharmacotherapy and occasional hospitalizations during acute exacerbations. Although her mood disorder has interfered with her educational and career goals in the past, it had never significantly interfered with her ability to work until the last year.

3. The petitioner's most recent treatment regime began

in February of 1989 when she began weekly counseling sessions with a community mental health organization therapist. The petitioner was diagnosed in October of 1989 by the supervising psychiatrist as having dysthymia (a chronic, low-level of depression) and a personality disorder. Her symptoms at that time included a depressed mood, mild anxiety, suicidal ideation, chronic low self-esteem, overeating and oversleeping, and deficits in concentration. She was treated with Imipramine and Xanax.

4. Although she was prescribed increasingly higher doses of the medication, the petitioner's symptoms persisted and worsened. By January of 1990, the petitioner was hospitalized for an acute exacerbation of her symptoms and it was determined that she was suffering from a depressive episode superimposed over her long-standing dysthymic state. She was treated with Lithium and Imipramine with no improvement and was discharged to counseling.

5. After her discharge, the petitioner found it increasingly difficult to get out of bed and go to work, and shortly thereafter (February of 1990), was laid off her job (due to her employer's financial problems). She continued with her medication and therapy and with the support of her counselor made repeated efforts to find another job. During this time she had periods of improvement due to the medication but she quickly crashed down to depressive lows where all her usual symptoms returned. After many unsuccessful interviews, she found a job in October of 1990.

However, when faced with actually leaving her home and going into work, the petitioner had severe anxiety and panic attacks which she could not overcome. Shortly after taking the job and having missed several days due to her illness, she resigned.

6. The petitioner has lived alone in her own apartment during the last year. She has great difficulty in sleeping at night and is constantly fatigued. She alternates between periods when she overeats and period when she does not eat for days. During a phase when her medicine is helping her she tries to clean her apartment, goes out grocery shopping and gets her mail. She buys food that will keep so she does not have to shop again for a while. She tries to read or watch TV but has great difficulty concentrating for more than a few minutes. She frequently starts something and completely forgets what she was doing or how to finish it. During the last two months she has been in a particularly bad phase. She has been unable to shop or do her laundry since Christmas and has not picked up her mail. She rarely goes outside and recently found it a major challenge to put seeds in her birdfeeder. She rarely sees anyone and often does not answer her door when someone is there. She has continued with great effort to attend her counseling most of the time. The morning of her Medicaid hearing, she called to report she could not attend but after taking a high dosage of Xanax was able to come in although she was nervous, shaky, tearful, and finally unable to concentrate

or answer simple questions.

7. The uncontroverted medical opinions supplied by the petitioner's treating psychiatrist and therapist in December of 1990, are incorporated as facts herein by reference.

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.

Persons who have medical conditions which meet or equal the severity level set forth in the Social Security regulations "Listings of Impairments" must be found to meet the definition of eligibility set forth above without regard to their age, education or work experience. 20 C.F.R. § 416.920(d). The regulations include the following listing:

12.04 Affective Disorders:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Deficiencies of concentration, persistence or

pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-life settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

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

The medical and other evidence clearly shows that the petitioner satisfies the requirements at Paragraph A. (1) (a), (b), (c), (d), (e), (f), (g), and (h) and Paragraph B. (1), (2), (3), and (4) of the listing set out above. As such, it must be determined that the petitioner has met her burden of proving disability as that term is defined in the regulation and is thus eligible for Medicaid.

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