

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9994
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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 an eighth grade education. His ability to read and write is limited and he was unable to fill out his Medicaid application himself. He spent twenty years in the army where he drove trucks and tanks. Since leaving the army ten years ago, the petitioner's only employment has been as a "flagman" on road construction projects which he did during the summer. That job required him to stand for long periods of time. He feels he can no longer do that job due to medical problems which limit his ability to do heavy work. He has been unable to find lighter work.

2. The petitioner suffers from dysfunction of the left foot as the result of a shrapnel wound he received in Vietnam. He has sensory loss and weakness from the knee down which

affects his balance and endurance. He can walk short distances but for longer ones needs to hold on to something for balance. He cannot stand for more than thirty to sixty minutes at a time and cannot climb stairs.

3. The petitioner suffers a limited range of motion in his left shoulder as a result of a broken collarbone. He cannot lift his arm over his head, and the combination of this loss with his foot limits him to ten to fifteen pounds of lifting.

4. The petitioner suffers also from severe shortness of breath, particularly in the hot weather, which affects him especially at night and interrupts his sleep. He has been hospitalized on at least one occasion but has not had the money to seek regular treatment for this, or any other medical problem. His breathing difficulty has been confirmed by medical exam but laboratory tests done some years ago found no evidence of active cardiopulmonary disease.

5. The petitioner appears to have some hearing loss but has not had a formal evaluation of its extent. He also drinks excessive amounts of alcohol but there is at present, no evidence of organic end damage therefrom or any evidence that his alcohol abuse interferes with his ability to function. The petitioner has not seen a physician on a regular basis since 1981 (when he had his foot surgery at the VA).

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.

Because the petitioner is unable to stand for long periods of time, the most strenuous type of work he could possibly perform is in the "sedentary" range:

Sedentary work involves lifting no more than ten pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a)

Social Security's Medical-Vocational Guidelines (the "grid") direct that individuals "closely approaching advanced age" (50-54), with "limited education" (less than high school) and an "unskilled" work history who are limited to sedentary work as a result of their medical impairments must be found to be disabled. 20 C.F.R. § 404, Subpart P,

Appendix 2, Rule 201.09. As the petitioner is disabled under SSA guidelines, he must be found eligible for Medicaid benefits.

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