

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 9133  
 )  
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 male with a 12th grade education. He received an undesirable discharge from the military, became involved with organized crime and was incarcerated several times (28 years in total), including a stint in a federal penitentiary (Sing Sing) in connection with his conviction for violent crimes (i.e., attempted murder).

2. The petitioner has work experience as a laborer in the roofing and painting trades. In those jobs he was required to constantly stand, walk and bend. He occasionally lifted up to 50 pounds and 25 pounds frequently on these jobs.

Except for his last job, the petitioner quit or was fired from every job he had within six months of starting it as a result of heated confrontations with his employers. He left his last job in 1979 due to injuries sustained when he fell four stories.

3. From 1979 through 1982, the petitioner received disability benefits in connection with his accident which resulted in two fractured legs and knees. From 1982 through 1987, the petitioner was incarcerated in upstate New York. Thereafter, he moved to Vermont where he lives with his current wife.

4. The petitioner's physical problems presently consist of the following:

1) Residual arthritis in his knees as a result of his fractures, which have otherwise healed well. This arthritis causes his legs to sometimes lock up and collapse on him and causes him pain in his legs when he walks long distances or lifts heavy objects. It is possible that this condition could improve with surgery but because the petitioner cannot pay for the operation it is being managed, as is his other pain, by the use of Tylenol with codeine;

2) Cervical Myelopathy due to congenital fusion of two of his vertebrae and degenerative disc disease which causes him some pain when he turns his head or attempts to lift heavy objects;

3) Occasional migraine headaches with attendant numbness of his left arm which does not cause any significant functional limitations; and

4) COPD (emphysema) for which the petitioner is treated with a Ventalin inhaler and which has stabilized although the petitioner continues to smoke four packs of cigarettes a day against his doctor's advice. The petitioner becomes particularly short of breath when he walks more than a few blocks or up stairs.

5. In addition to his physical problems, the petitioner also suffers from a severe personality disorder characterized by frequent and uncontrolled "explosively angry" moods, pathological aggressiveness, unstable interpersonal relationships and impulsive damaging and antisocial behavior. These impairments have resulted in the

petitioner's repeated incarcerations; inability to accept direction or criticism by employers or peers; aggressive and irrational behavior, including threats, with former employers; violent behavior towards his former seven spouses, four of whom he admits to having beaten; and failure to have a relationship with any of his fourteen children, and difficulty focusing or concentrating on tasks.

The petitioner can only alleviate these symptoms by isolating himself from tension, stress and contact with persons outside his family which causes him to be fearful of going out in public. For this reason, the petitioner carries a secondary diagnosis of agoraphobia.

6. The petitioner's current activities consist of caring for his wife who is totally disabled. In this capacity he cooks, does light housekeeping (requiring lifting under 25 pounds) and shops at a store 150 yards from his home for groceries. He also receives a grant from DSW as his wife's Essential Person.<sup>1</sup> Other than his trip to the grocery store, he rarely goes out and sees few people other than his wife's 14-year-old son who lives with them and helps with the heavier work.

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 exertional impairments which certainly limit the kind of work he can do. Even if it were found that the petitioner cannot do his former work, it must be concluded based on his description of his activities caring for his wife, that he could perform jobs requiring "light work". See 20 C.F.R. § 404.1567(b). However, the Social Security "grids" would dictate that a 50 year old person ("closely approaching advanced age"), with a high school education, and an unskilled work background would still be able to perform several jobs in the economy even if he were restricted to light work, and thus could not be found to be disabled. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 202.13.

The focus here must, therefore, be on the petitioner's non-exertional impairments which include a personality disorder which has been categorized by an examining psychiatrist as "severe".

**12.08 PERSONALITY DISORDERS:**

A personality disorder exists when personality traits are inflexible and maladaptive and cause either

significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

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

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

**AND**

B. Resulting in three 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 compete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like 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).

The evidence shows that paragraphs A(4)(5)(6) are met under the first test, in that the evidence shows the petitioner has markedly exhibited each of these symptoms.

The impact of these symptoms has been a marked restriction in the petitioner's ability to maintain social functioning, to concentrate on or complete tasks at work and

the repetition of episodes in his work-settings in which the petitioner's explosive personality traits have been exacerbated and have led to his withdrawal (voluntarily and involuntarily) from that setting. Thus the requirements of paragraphs B(2)(3) and (4) are met.

It must be found, that as the petitioner has met the severity requirements for the listing under personality disorders that he must be found to be disabled. 20 C.F.R. § 404.1520(d).

FOOTNOTES

<sup>1</sup>The petitioner, who is represented by counsel, understands that if he is found to be disabled, he will no longer qualify as an "Essential Person" to his spouse.

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