

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,218
)
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 turned 50 years old on September 22, 1991. She applied for Medicaid in June 1990. She has a 9th grade education and a work history that includes stock and sales clerking in food and department stores, and factory assembly work. The medical evidence indicates that the petitioner has a history of anxiety and alcohol abuse. Apparently, however, based on her reported work history, these problems did not keep her from working regularly from 1976 to 1988.

In May, 1990, the petitioner was involved in a car accident that triggered complaints of severe back and neck pain. In the two or three months immediately following the accident the petitioner was treated with anti-inflammatory medication and prescribed rest. Her treating physician at that time also noted that her anxiety appeared to have been worsened by the car accident.

In August, 1990, the petitioner underwent a

consultative psychiatric examination that noted symptoms of anxiety, but did not offer a diagnosis or an opinion as to employability.

In October, 1990, a consultative examination (without testing) by an internist described the petitioner's continuing complaints but found "no indication of disability due to back symptoms, visual or hearing problems. She has chronic depression and homosexual relationship".

When her symptoms persisted, the petitioner began treatment with a rehabilitation specialist in April, 1991. On her initial visit this physician noted that even though the petitioner had been "cleared for work" in October, 1990,¹ she had continually complained of debilitating back pain since her accident in May, 1990. He diagnosed the petitioner's problem as "myofacial pain syndrome" and overall "deconditioning", and prescribed an outpatient physical therapy program. However, when the petitioner returned three weeks later, her pain was unchanged. The physical therapy was discontinued and the petitioner was started on medication. After two more weeks without significant change, the petitioner was prescribed additional medication and scheduled for a CAT scan.

The most recent narrative report of the petitioner's level of functioning is contained in the following report from the treating rehabilitation specialist, dated June 13, 1991:

[Petitioner] presents for follow up. We have reviewed

her MRI of her lumbosacral spine. The overall impression is that she has an acquired spinal stenosis at the L4-5 level with no focal disk herniation. She is generally deconditioned, meaning that she is, in layman's terms, out of shape, however, she will be able to perform work activities. The guidelines to work activities should be light duty only with lifting less than 20 pounds and a position not requiring long sitting or standing, or one which provides for frequent rest breaks.

The spinal stenosis should be treated with a home-based exercise program to maintain range of motion of her spine and to try and decrease her pain. No doubt she will have low-back pain from her spinal stenosis, but this should not preclude her from working.

On a G.A. form, filled out on August 8, 1991, the above physician repeated the less-than-20-pound limit regarding lifting and stated that the petitioner could not engage in prolonged sitting (more than one-and-a-half hours) or standing (one hour). He also indicated that the petitioner's disability would probably last one year.

The medical evidence clearly establishes that the petitioner has been experiencing pain and weakness in her back since her car accident in May, 1990. It also appears that the accident exacerbated her long-standing problems with anxiety and depression. Despite the lack of clinical findings by the consultative physician in October, 1990, it is clear that the petitioner's treating physician, a rehabilitation specialist, views as credible the petitioner's complaints concerning both the severity and duration of her symptoms. Therefore, it is found that since May, 1990, the petitioner has been precluded from performing any work that entails lifting 20 pounds or more, requires prolonged sitting or standing, and does not allow for

frequent rest breaks. This would preclude the petitioner's past jobs and would appear to rule out most, if not all, other jobs available in a competitive marketplace.²

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.

As noted above, a preponderance of the medical evidence establishes that the petitioner, as of May 1990, has been unable to sit or stand for prolonged periods of time and lift 20 pounds or more. Moreover, she requires frequent periods of rest throughout the day. It is concluded that this would rule out virtually all competitive work activity.

The above definition is, therefore, met, and the Department's decision is reversed.

FOOTNOTES

¹It appears that this was in reference to the above-cited consultative examination.

²The petitioner's past work being precluded, the Department would have the burden of showing the existence of alternative jobs that would accommodate the petitioner's specific limitations. In this case, comparing the petitioner, prior to age fifty, to a fifty-year-old woman who, under the "grid regulations", would be disabled if limited to "sedentary work", it is highly doubtful the Department could show that a forty-nine-year-old woman with significantly greater medical impairments (in addition to being limited to sedentary work, the petitioner needs frequent rest periods) has more jobs available to her than a fifty-year-old, not-as-impaired, counterpart. See 20 C.F.R. §§ 416.963, 416.966(d), 416.967(a), and 404, Subpart P., Appendix 2, Rule 201.09.

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