

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,219  
 )  
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 is a forty-six-year-old woman with a post-secondary education. She has worked as a fashion model, secretary, market researcher, and office manager. She last worked in July, 1988. The petitioner claims to have been laid off because of excessive absenteeism.

The petitioner has suffered for many years from migraine headaches, depression, anxiety, and panic attacks. She has been seen repeatedly by general physicians, neurologists and psychologists without much apparent success. In 1982, a neurologist described her headaches as "classical migraine," but other doctors have indicated they suspect her problems are largely "psychogenic".

In May, 1989, the petitioner underwent a psychiatric assessment, apparently in connection with her claim to

disability benefits, which resulted in the following

"assessment":

Assessment

1. Most of her physicians agree that the patient suffers from migraine headaches. These are moderately distressing, but probably represent a small part of her problem.

2. She exhibits a number of features more suggestive of a personality disorder. While this assessment is difficult to make in one or two interviews, a number of peculiarities are noted. She was fired from her job, but does not know why. She violated her lease, may soon be evicted, but feels entitled to own a dog. She recently broke off her engagement. She was so late for her first interview with me that we had to reschedule it. Her physical complaints have perplexed a number of doctors.

3. She probably fits best into a diagnosis of Histrionic Personality Disorder. People with this disorder are excessively emotional and seek attention. They tend to be imprecise in their thinking and use an impressionistic style of reasoning. They tend to be preoccupied with their appearance. Her history of modeling, retaining fashion despite her pain and breast implants are all consistent. She was mildly seductive with me and Dr. [name] made a note of her pulling up her skirt.

4. Histrionic Personality Disorder often co-exists with Somatization Disorder. With the latter, the patient complains of many ailments for which there are no physical findings or for which the distress is in excess of what would be expected. Although I did not solicit physical symptoms to establish this diagnosis, I suspect it may be present.

5. DSM III R Diagnosis:

Axis I	300.81	Somatization Disorder (provisional)
Axis II	301.50	Histrionic Personality Disorder
Axis III		Migraines Fibrocystic breast disease
Axis IV		Psychosocial Stressors: moderate; financial difficulties,

breakup with fiancée, children  
leaving--primarily acute  
events

Axis V      Current GAF: 65  
             Highest GAF past year: 75

6. Her apparent lack of disciplined reasoning (witness serial sevens and proverb interpretation on my exam) would probably interfere with work as a secretary or in other positions where careful and logical thought is necessary.

Although she attributes her disability to her headaches, they actually occur only three times per week and last at most eight hours. Thus, the majority of her time is unaffected. Her panic attacks are now quiescent and are easily treated if they recur. Thus, she should be able to work at a job that provides flexible time--so that she could leave work during headaches.

7. I would expect that she could manage her finances independently as well as most people.

8. It was my impression that she emphasized her disability for these interviews.

However in June, 1990, her treating physician wrote the following report:

As I indicated in my previous report, her major disability is frequent severe migraine headaches.

When not having a headache, she is as capable of a reasonably full physical activity as most middle aged women. When having a headache, she is incapable of doing any work at all, and in fact, usually has to go to bed in a dark room and take pain medication.

These headaches occur at irregular intervals, but frequently occur as often as twice weekly and last a day or two at a time. Thus, in a month, she might have to miss from one to seven work days. She has been unable to hold her previous jobs because of her absenteeism.

Over many years of therapy, I have been modestly successful in reducing the frequency and severity of her migraine headaches, but I do not foresee any substantial improvement over her present status in the near future.

In October, 1990, the petitioner underwent another consultative psychiatric evaluation. This report includes the following assessment and prognosis:

CURRENT LEVEL OF FUNCTIONING

Her current level of functioning is good, except when interrupted with migraine headaches.

PRESENT DAILY ACTIVITIES

Her present daily activities consist of getting up late in the morning, having one to two cups of coffee and depending on the presence of migraine headache with nausea, she will have a glass of orange juice. She, otherwise, has only one other organized meal per day. During the afternoon or evening or both, she will watch TV, or listen to classical music, but otherwise, she describes her interests and hobbies as distinctly decreased since losing her job and being unable to obtain another in the last two and a half years. She describes herself as, essentially, without funds to pursue other activities, in order to pay for her doctors appointments and her medications.

Present interests consist, at this time, of listening to classical music on the radio, and listening to the news. She describes herself as being in bed by, roughly, midnight each day.

Ability to relate: Currently, she is in contact with her mother and her brother, though they both live in New Jersey, and she has one best friend, a woman who lives in [town], VT. Apparently, she has the ability to make good and long lasting friends.

I believe she could understand oral instructions and I believe she could carry out simple instructions in a reasonable period of time and probably could carry out complex instructions.

I do believe that she could get along adequately with fellow workers or supervisors.

I do doubt that she can maintain adequate attendance for a low stress job because of the intermittent really intrusion of migraine headaches, and the chronic recurrent nature of migraine headaches.

It is also possible that she would be unable to regularly be on time for work, because either having a migraine headache or being under the influence of medications taken to treat the migraine headaches.

DIAGNOSIS

Axis I Major depressive episode in the past treated with Prozac.

Axis II Personality disorder, none.

Axis III Migraine headaches as well as premenstrual syndrome.

PROGNOSIS

There is no reason to expect that the patient's migraine headaches, either the severity or the frequency of these, will improve significantly within the next 12 months because she is currently being treated by Dr. [name] in [town] VT, and has had consultations with Dr. [name] in Hitchcock who confirm Dr. [name] treatment program.

I believe that this patient is competent to manage funds without assistance.

I do believe the patient was completely open and honest in providing information for the Mental Status and Activities of Daily Living, without any evidence of exaggeration or malingering.

Based on the above, it is found that the petitioner's migraine headaches are real and of sufficient severity and frequency to preclude any realistic chance of maintaining competitive employment on a regular and sustained bases.

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, although there is some medical opinion that the petitioner's complaints are exaggerated, a clear preponderance of evidence establishes that the petitioner's migraine headaches render her disabled within the meaning of the above definition. The Department's decision is, therefore, reversed.

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