

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,248
)
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 quit school in the middle of the ninth grade. She has held several jobs for short periods of time, primarily because she has been at home raising children. She is now separated from her husband who has custody of her two children. Her last and only significant job was as a nurse's aide.

2. In the last four or five years the petitioner has had four major surgeries on both of her shoulders to repair torn rotator cuffs. She continues to suffer residual pain and inflammation in her shoulders, back and neck described as "classical fibrositis" and for which she is treated with Motrin and Valium three times per day. She is limited by this problem to lifting ten pounds on a regular basis, keeping her arms at a low level and not lifting above a right angle. She also must take a break every thirty minutes or so of use.

Because of this the Department agrees that the petitioner cannot return to her former job.

3. The petitioner has other physical problems as well, the principal one being severe headaches. The records show that from October 1990 to February of 1991 alone, she visited a hospital emergency room ten times for treatment of these tension headaches which are treated with Soma. A neurologist who saw the petitioner in March of 1991 described these headaches as part of a "significant vascular headache syndrome" characterized by "bifrontal pounding and throbbing". The headaches were assessed as reasonably severe occurring every other day or sometimes every day.

4. In addition to these physical problems, the petitioner was treated for emotional problems for about six months and has been found to have several mental deficits. Her treating psychiatrist describes her as suffering from a depressive syndrome characterized by anhedonia and appetite disturbance (which had improved under her care), sleep disturbance and psychomotor agitation. She was found to have limits on her ability to understand simple instructions and on her short term memory, which she felt moderately affect the petitioner's daily living and social functioning.

Her treating physician was unable to assess questions relating to her work ability as she has not dealt with that area. However, she suspected some intellectual limitations which she suggested needed further evaluation.

5. The petitioner was evaluated by a consulting psychologist at the Department's request who concluded that she had an overall low average IQ of 81 and several mental deficits including an inability to sustain effort and concentrate, limited abilities to do math (simple calculation) and impaired reasoning and memory, especially as to short-term recall for the latter. She also has cognitive difficulties related to a long standing pattern of anxiety and depression. In addition she was found to suffer from a passive dependent personality which causes her to become easily overwhelmed and makes her unable to cope with stress. She has had an alcohol problem in the past but it does not appear to cause significant problems for her at present, although she did go on a stress induced drinking binge recently. Because of these impairments she was found to have limited social contact and limited daily activity (television watching, light housework, visiting with her friends and walking.)

6. Because the above two reports are consistent and uncontroverted in the evidence, their findings are adopted as fact.

7. The petitioner states she is unable to work at present primarily due to headaches and depression. The headache medication she has taken does not help her. When her headaches come on, which is four to five times per week, she pulls the shades and lies down for the day. She still

goes to the emergency room about two times per month for a Demerol shot for her headaches when she can't bear it any more. The petitioner continues to be depressed and has been unable to go for psychiatric treatment in the last six months because she has a \$203.00 bill with her psychiatrist which she cannot pay. She was on anti-depressants while being treated but she had trouble functioning on them. The recent loss of her father and inability to see or talk with her children on the phone has added to her depression and she wants to return for more mental health treatments. She continues as well to suffer from pain in her neck, shoulders and back due to fibrositis.

8. The petitioner currently lives in an apartment with her boyfriend where she does light housework during the day including dishes and laundry. Her boyfriend does any work that requires lifting or pushing and pulling such as mopping or vacuuming. Other than occasional visits with her brother and a couple of friends on good days, she does nothing but lie in bed for her headaches or watch television. Her boyfriend does all her errands and shopping.

9. The petitioner's and her boyfriend's testimony, which form the basis for the statements in the above paragraphs, are found to be entirely credible and consistent with the medical evidence. Their statements are adopted as fact.

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 met her burden of showing that her medical impairments prevent her from returning to her past employment. The burden now shifts to the Department to show that she has the residual functional capacity to do other work available in the economy.

There is no evidence in this case that the petitioner has the ability to perform the basic functions, both physical and mental, needed to perform any kind of a job due to her combination of impairments. She is in almost constant daily pain from debilitating headaches which, along with her other physical, mental and emotional problems, makes her unable to concentrate or persist at any activity for more than very short periods of time. As such, it must

be found that her combination of impairments meets or equals in severity those listed as disabling in the Social Security regulations especially those at 20 C.F.R. § 404, Subpart P, App. 1, § 12.04(a)(1) governing affective disorders. See 20 C.F.R. § 416.926. She therefore meets the definition of disability under the Medicaid regulations.

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