

food and nutrition manager at Abenaki Self-Help which required her to process papers at a desk and drive a van for up to five hours at a time.

2. The petitioner was unable to continue with her last job in 1989 due to a combination of ailments including diabetes, pericardial chest pain, epigastric pain, left arm pain, and most significantly low back pain radiating to her right leg. Because of a lack of health insurance or money, the petitioner had not visited a doctor with any frequency until August of 1990. Those sparse records which do exist show that the petitioner has had diabetes and epigastric pain for some sixteen years but did not develop back pain until 1986 which has slowly worsened.

3. The petitioner testified that due to pain she cannot climb up or down stairs, and she cannot sit, stand, or walk for more than 30-45 minutes without pain or numbness in her left leg. She awakens in pain 3-4 times per night and is often tired during the day and must take naps. She takes Advil and Tylenol every three hours on a daily basis for pain as well as Insulin for her diabetes. Her pain is eased by the medicine but not removed. She would like some stronger medication but cannot afford it. She does some light shopping for herself three times per week but relies more and more on her children to do her shopping, laundry, and heavy housework. She tries to sew but has trouble with stiffness in her finger after a few minutes. She used to

enjoy going out to Bingo games, but can no longer go because she cannot sit down long enough. The petitioner's testimony as to her limitations is found to be entirely credible and well-supported by the objective medical evidence and the opinions of both her physician and the consulting examiner.

4. In October of 1990, the petitioner's treating physician reported to a federal housing agency that the petitioner was disabled due to the above ailments. On April 9, 1991, her physician filled out a form in which he unexplainedly skipped several questions regarding the petitioner's abilities. The assessments he did make are contradictory. He stated that the petitioner's ability to sit, stand, and walk were limited to an hour at a time due to back pain, and that her ability to lift and bend was compromised by back pain. He stated "no" to a question asking "can she sit a total of less than about six hours". He checked "yes" to both an ability to walk or stand a total of less than six hours and an ability to stand for six hours per day. He also limited her to occasional climbing, balancing, stooping, kneeling, crouching, and crawling. Finally, he wrote "yes" in response to a question asking whether the petitioner was disabled as that term is defined in the Social Security regulations but checked a box that she could do sedentary work. The above apparent conflicts and gaps can best be resolved by focusing on the physician's written statement over his check marks. Based on that methodology, it is found that the petitioner's treating

physician's opinion is that the petitioner is limited to sitting, standing or walking for one hour at a time due to back pain and is unable to lift objects of more than 10 lbs., or to bend at all due to back pain.

5. The petitioner's physician referred her to a neurosurgeon for a CT scan of her lower back. On April 15, 1991 he concluded, based upon the radiologic studies, that the petitioner's spine showed a "definite hypertrophic spur going into the left L-5 forearm" which he concluded was "certainly the cause for ongoing pain in her left leg" and explained the numbness she felt in her left leg and big toe.

He concluded that she needed decompression of the L-5 nerve root through operation. He also found that the petitioner had severe Dupuytren's contracture in her right hand which he felt needed surgical decompression. According to Taber's Cyclopedic Medical Dictionary, 14th Edition, Dupuytren's contracture is a "Contracture of palma fascia causing the ring and little fingers to bend into the palm so that they cannot be extended".

6. A consultant hired by the Department, reported on November 9, 1990 that he found upon physical examination that the petitioner's lower back was tender and that her range of motion in her lumbosacral spine was decreased with side to side motion very limited. He did not find any problem with the knees and said that her chest pain which radiated to her left arm needed to be worked up to determine if she had angina. He also noted a soft systolic ejection

murmur upon cardiac examination. He did not express an opinion as to whether the petitioner likely experienced the degree of pain she reported to him which she said limited her to half an hour each of sitting, standing, and walking, "light" lifting only and no bending.

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 medical evidence, both subjective and objective, shows that the petitioner has at least two severe medical conditions (spinal degeneration and a hand abnormality) which create pain and stiffness and which significantly interfere with her ability to function. The petitioner's pain and significant limitation of motion in her spine as well as the resulting radiating pain and numbness in her left leg, taken alone as a single condition either meets or equals in severity the listings for disorders of the spine in the Social Security regulations as follows:

c. Other vertebrogenic disorders (e.g., herniated

nucleus pulposis spiral stenosis) with the following persisting for at least three months despite prescribed therapy and expected to last 12 months with both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and
2. Appropriate radicular distribution of significant motion loss with muscle weakness and sensory and reflex loss.

20 C.F.R. § 404, Subpart P,
Appendix 1, Regulation 1.05(c)

As the petitioner's condition has been found to meet or equal the listings, the petitioner must be found to be disabled without regard to her age, education or work experience. 20 C.F.R. § 416.920(d).

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