

treating physician indicating that the petitioner was "partially incapacitated from 12-28-90 to 2-25-91" but that he was "completely recovered as of above dated". The petitioner, who was candid (perhaps, to a fault), testified that he has been looking for work the past several years but that nobody will hire him because of his bowel disease. The petitioner did not dispute that he had the physical ability to do light work.¹

Based on the above, it cannot be concluded that for any recent consecutive 12-month period the petitioner has been unable to perform work that did not require heavy (more than 25 pounds) lifting or other physical exertion.

ORDER

The Department's decision is affirmed.

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 regulations further provide that an individual of the petitioner's age, education, and work experience is not disabled if he can perform "light work", which is defined in the regulations² as lifting no more than 20 pounds at a time with frequent lifting up to 10 pounds and a good deal of walking and standing. 20 C.F.R. § 404, Subpart P. Appendix II, Rule 202.10.³ As noted above, the medical evidence does not establish that the petitioner cannot now, and could not prior to December 1990, do work at this exertional level.⁴ Therefore, the Department's decision is affirmed.⁵

FOOTNOTES

¹The petitioner indicated that he had contacted Vermont Legal Aid, but that he wished to proceed with the hearing unrepresented.

²20 C.F.R. § 416.967(b).

³This assumes that the petitioner's past work provided the petitioner with no "transferable skills". See 20 C.F.R. § 416.968.

⁴This assessment does not address the petitioner's ability to do his "past work" because of his specialized self-employment. See C.F.R. § 416.920.

⁵As a final matter, the petitioner is advised that if his condition worsens, or when he turns fifty-five, he may well qualify for disability benefits and he should reapply.

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