STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,285
	)	
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 thirty-one-year-old woman with a high school diploma and one year of college. From November, 1987 to April, 1990, she worked as a kitchen steward and receiving clerk for a large ski lodge. In August, 1990, she worked for a college meal service.

In September, 1990, the petitioner had a blackout while driving her car. Although she was not seriously injured, this began a period of frequent spells of dizziness and loss of motor control. Initially, she was treated with Dilantin, which helped control the more severe symptoms, but she has continued to experience weakness, light-headedness, and fatigue on a near-constant basis.

Tests for a neurological basis of the petitioner's ailments have been inconclusive. In a January, 1991, report to D.D.S., the petitioner's treating physician gave the

following "history of present illness":

> [Petitioner] was seen in the office on September 26, 1990, in follow up for an Emergency Room visit. She had reportedly been driving her car and suddenly realized she was in the middle of a field with no idea how she had gotten there. She reported several episodes of this type of absence event, where she would lose track of anywhere from several minutes to close to an hour of time. Several of these episodes occurred while driving a car. Two or three of these episodes, she feels were observed, there were no reports given to her of any atypical movements, clonictonic type jerking or any obvious seizure activity.
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> In workup for this, she had an EEG which was abnormal showing reversed phase sharp waves, consistent with a seizure disorder, but also not diagnostic of this. She was initially started on Dilantin, became toxic, showing signs of ataxia. The Dilantin was decreased. It is now in therapeutic range and the patient has resolution of those type symptoms. She continues to have mild episodes of absence with periods lasting usually several minutes.
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> She has been seen by neurology, [doctor] and [doctor], who feel this is atypical of a seizure disorder, but given the EEG, that it must be treated as real at this time. They have ordered CT scan which by report to me is normal. The patient is presently doing fairly well on her Dilantin.
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> Her physical examination has remained entirely normal throughout. The major set back to [petitioner] has been that she cannot drive at this point. This, of course, has made her ability to be employed markedly decreased as she had to give up the job she had as she had to drive approximately ten miles to work on a daily basis.
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> Certainly, at present, [petitioner] could be trained in a number of areas and really there is no prohibition against working providing that she is not doing something involved in employment that if she were to suffer an absence episode could result in direct harm to her. Things obvious to me would be employment involving driving, operating any kind of equipment of a powerful nature, working at a height, using sharp objects.
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> Physically, there are no restrictions other than those

> above and it would appear that her most pressing handicap for [petitioner] is her inability to be able to drive.

In his more-recent reports, however, the petitioner's treating physician has diagnosed the petitioner's condition as "chronic fatigue syndrome". He has also become less sanguine about the petitioner's employability. In a recent report (July 25, 1991) solicited by the Department at the request of the hearing officer[1] the treating physician gave the following assessment:

> Over the last several months [patient] has noted markedly increased fatigue, decreased stamina, decreased appetite, (illegible) forgetfulness and at times mental confusion. Her physical examine has remained essentially normal. Laboratory tests: Tu, T u,
> Tsh, Ana, Rf, Chem profile - all normal or negative. SBC had moderate number of atypical lymphs with WAC 4.5 56% lymphs/28% (illegible). Mono tests were negative.
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> This overall picture is consistent with <u>chronic fatigue syndrome</u> and this may be what [petitioner] has. If it is it may well take years to resolve or it may never resolve. There is no definitive test to prove the diagnosis nor is there any specific treatment. Her symptoms are also consistent with a sero negative mononucleuses or other viral illnesses.
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> [Petitioner's] limitations are in stamina and ability to work every day other than a specific physical limitation. She could do almost any job but for varying lengths of time (minutes - less depending on day).

The petitioner testified that she still suffers chronic weakness and fatigue and frequent unpredictable spells of dizziness. Her existence has become largely homebound and sedentary. Her parents help her with chores and shopping. She sees a chiropractor regularly for chronic back pain, but she does not allege this as a primary source of disability. The petitioner's testimony was deemed credible.

Although the petitioner is physically capable of performing the physical requirements (e.g., sitting, standing, lifting up to 20 pounds) of "light" and "sedentary work",[2] uncontroverted medical evidence establishes that the petitioner's symptoms preclude her being able to perform any job on a regular and sustained basis. The Department does not allege that there are any jobs in the competitive labor market that would accommodate what-would-be the petitioner's frequent absenteeism and her limited and unpredictable periods of productivity.

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.

In this case, uncontroverted evidence from a treating medical source establishes that the petitioner cannot perform any job on a regular and sustained basis. The above

definition of disability is thus met, and the Department's decision denying her Medicaid is reversed.

FOOTNOTES

[1]The hearing was held on July 2, 1991. The petitioner appeared pro se.

[2]See 20 C.F.R. ∋ 416.967.

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