

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,305
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his 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 man with a high school education. For the last twenty years he has operated a dairy farm.

In October, 1990, the petitioner severely injured his left leg after getting it caught in some farm machinery. In June, 1991, the petitioner's treating physician gave the following assessment of the petitioner's status:

Petitioner is now eight months post-farm accident that degloved his left leg and also sustained him a medial malleolus fracture that was operatively repaired. He now presents with limited range of motion in his ankle, specifically in dorsiflexion. This makes it impossible for him to squat and also presently requires him wearing the molded AFO. He will be followed by Doctor (name) further for this ankle problem. It certainly looks that for some time to come he would benefit from wearing the AFO and even in the future he may not regain much more range of motion. The hip pain is obviously not related to the injury but because of his altered gait secondary to the ankle injury pre-existing right hip discomfort (he did not report this) can be aggravated. Although his gait presently looks relatively good as he takes even steps and has symmetrical weight

bearing, he certainly is limited by the present status of his left ankle. Keeping all of this in mind, I don't believe (petitioner) is going to be able to go back to farming in the future and I would certainly suggest that he look into retraining for some other job that does not require heavy lifting, carrying, use of ladders, bending, squatting, and long distance walking. I believe that Farm Family can address this with him in detail and keeping this in mind I believe that he is not going to be gainfully employed for at least a year following his injury and probably sometime thereafter. Also, I would suggest that he look for a primary care physician in his area. Please call me if you have any further questions.

The petitioner does not allege, and the medical evidence clearly does not establish, that he is physically unable, at present, to perform at least sedentary work. Unfortunately, under the regulations (see infra) this renders the petitioner ineligible for disability-based Medicaid.

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.

Given the facts that the petitioner is forty-six-years-old with a high school education and is not precluded from performing sedentary work, the regulations dictate that he be found "not disabled".¹ 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.21. The Board is thus bound by law to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

FOOTNOTES

¹The petitioner, through his representative, cogently and persuasively argued that the petitioner, who is highly motivated, should be given a reasonable chance to develop skills necessary to make a meaningful adjustment to less strenuous work. Unfortunately, however, the regulations are deaf to arguments of this sort. Under the regulations, if the petitioner has the physical capacity to perform an unskilled sedentary job, he cannot be found disabled.

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