

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,363  
 )  
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-year-old man with a high school education. His primary work has been janitorial jobs. He last worked in January, 1990.

The petitioner has a history of high blood pressure, diabetes, carpal tunnel syndrome, and depression. In a statement dated August 26, 1991, the petitioner's family physician opined that the petitioner's physical problems were mostly "vague and nonspecific", but that "his somatic problems represent a depressive state". As for working, the physician stated:

Physically, [petitioner] is probably capable of working. Psychologically I don't think [petitioner] is capable of any sustained employment. I suspect that this situation will last twelve continuous months.

The petitioner underwent a comprehensive consultative psychological evaluation on September 26, 1991. After detailing the petitioner's background, behavioral

observations, and test evaluations, the examining psychologist reported as follows:

Conclusions and Recommendations:

The above data indicate that this man's measured intellectual functioning is in the Borderline range. The evaluation also revealed that the client is experiencing a significant level of depression with accompanying neurovegetative signs and a high level of somatizing. There is some suggestion of a past history of paraphilia, but the client claims the alleged charges were dropped. [Petitioner] also has a characterological disturbance in the form of a mixed personality disorder.

The following DSM III-R diagnostic configuration is suggested by the current data:

Axis 1:	296.33	Major Depression, Recurrent, Without
		Psychotic Features
		Rule Out Paraphilia
Axis II:	301.90	Personality Disorder, Not Otherwise Specified (Mixed Personality Disorder - Impulsive Traits, Dependent Traits)
	V40.00	Borderline Intellectual Functioning
Axis III:		Hypertension ? Diabetes
Axis IV:	4	Severity of Psychosocial Stress - Severe
Axis V:		Global Assessment of Functioning Scale
		(GAF)
		Current: 50
		Highest: 50

This man most definitely needs to continue to participate in ongoing psychotherapy. A possible change in antidepressant pharmacotherapy or increase in the reported amount of antidepressant now prescribed might be considered. This man's past history of

impulsive behavior and reported high level of suicidal ideation placed him at risk to act upon his suicidal thoughts. He indicated that the counselor that he is currently working with is aware of his level of suicidal ideation and is attempting to ensure that he does not act on these thoughts.

I see no indication that this man would be unable to manage any funds that might be awarded. However, I feel that a referral to the Department of Vocation Rehabilitation for vocation assessment and possible training should be considered. The client's current unemployed status only serves to enhance his perception of uselessness and worthlessness. Gainful employment could help to lessen the recurrence of frequent depressive episodes.

The petitioner began seeing a counselor at a community mental health service in August, 1991. In reports (in the form of checklists) dated September 5, 1991, the supervising psychiatrist noted the presence of several symptoms of an "affective disorder". Also checked as "moderate" were "restriction of activities of daily living" and "difficulties in maintaining social functioning."<sup>1</sup> It was noted that the petitioner had only been seen twice and that, with medication, he was expected to improve. In a subsequent note, the psychiatrist stated that the petitioner's problems appeared to be chronic; and that, therefore, "it seems that he has been impaired for at least a year. My expectation is that with treatment he will improve."

The problem with the latter assessments is that, while noting the presence of an impairment that has lasted a year, they do not specifically rule out the possibility that the petitioner is, and has been, capable of working. The only

report to find the petitioner "disabled" is that of the treating physician--but this was for psychological reasons, and this physician is not a psychiatrist. Nor is there any indication that this physician has treated the petitioner for "depression".

By far the most thorough, specific and, therefore, credible report in the medical evidence is that of the consultative psychologist (supra). Not only did this examiner give no indication that the petitioner was incapable of working, she also made clear that she thought the petitioner would be better off, from a psychological viewpoint, if he did work.<sup>2</sup>

Therefore, it must be concluded that the weight of the medical evidence precludes a finding that the petitioner is unable, due to a medically-determinable impairment, to perform unskilled work--including his past work as a janitor.

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.

In this case, a preponderance of the medical evidence does not establish that the petitioner, for any medical reason, is not able to perform his past work as a janitor or many other types of unskilled jobs. Therefore, the Department's decision is affirmed.

FOOTNOTES

<sup>1</sup>The forms appear to be based on the "listings" for mental impairments. See 20 C.F.R. § 404, Subpart P, Appendix I, Section 12. The checked responses do not meet or equal the listings, which, for example require "marked" (rather than "moderate") limitations under "Part B".

<sup>2</sup>This assessment is not controverted by the petitioner's current treating psychologist.

# # #