

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 10,453  
 )  
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

1. The petitioner is a forty-two-year-old woman who has a high school diploma and has completed two courses at a community college. As a single parent for the last ten years, she has raised three children, the youngest of whom, a nineteen-year-old woman, still lives with her.

2. The petitioner last worked regularly in 1986 as a hotel bartender where she stood in ten to eleven hour shifts and frequently lifted cases of beer. Prior to that time she did clerical work in a hospital admissions office where she did considerable walking delivering medical records and sat for long periods (2 hours at a time) putting data into a computer. All of her prior jobs have been in these two fields. She currently makes flower deliveries eight to ten times per month for which she earns about \$10.00 per month.

3. In 1985, the petitioner developed low back pain and intermittent numbness in her right leg and foot. She was diagnosed as having "nerve root entrapment" and a

probable herniated disc. Her problems gradually worsened and by August of 1990, her physician determined that her condition "disabled her in regard to sitting, standing, walking, lifting, carrying, and bending". She was prescribed analgesics and referred for an orthopedic evaluation. She was also found to be depressed due to her condition and was prescribed anti-depressant drugs. However, because the drugs made her feel drowsy and tired, she stopped taking them.

4. In the fall of 1990, the petitioner went through a CT scan which showed that she had a "moderate degenerative disc space narrowing at L5-S1" (regarding her lumbar spine) and "prominent osteophytes superiorly at the upper levels".

The orthopedic consultant interpreted this as showing degenerative disc disease. The orthopedist, who saw the petitioner two times, noted that she had restricted torso twisting, and restricted extension and flexion in her right foot. On the second visit he found "decreased sensation to pinprick over her right leg and foot and a pulling sensation in her buttocks and thigh a day after she had done extensive walking". As her CT scan showed no evidence of disc pathology, he concluded that the petitioner needed another test or "MRI" of the lumbar spine. The petitioner, however, was unable to afford such a test and it was not performed.

5. The petitioner testified that she experienced constant dull pain in her back and pain which travels from her right shoulder down through her right leg and foot. It

is sometimes relieved by the prescribed analgesics but is worsened by walking or sitting for prolonged periods or bending and reaching. Because of the constant pain and the intermittent leg numbness, she is unable to carry on many of her former activities. She must perform her household chores (such as dishwashing) slowly and with several breaks to rest. A full bag of groceries and a load of wet laundry pose considerable lifting and carrying problems for her. She solves these problems by carrying several lighter bags, and "throwing" her laundry down to the basement. She can no longer vacuum without pain because of the pushing and pulling motion. Her daughter now does the heavy cleaning. In addition, she is having difficulty sleeping because of the pain and often feels tired and must nap during the day.

She deals with her pain by frequently changing positions, lying down and taking medications. She cannot stand or sit for more than fifteen minutes at a time without pain or walk for more than a fourth of a mile at a time without pain. The petitioner is no longer able to go out dancing or bowling, is unable to mow her lawn and, on two to three days per month, cannot leave her bed at all. The petitioner's allegations are found to be credible and supported by the medical evidence.

6. A psychiatrist examined the petitioner at the Department's request and noted that she was tearful and that her mood was one of sadness. Aside from a sleep disturbance and a slight problem with concentration she had no

psychiatric deficits. He noted during the interview that she frequently changed positions in order to deal with the discomfort in her lower back. He concluded that the petitioner's

. . .depression would not stop her from being able to work. I believe that she would like to work, and I believe that the depression is a reactive depression, that is not leading to her inability to work. As she says, "it's really boring staying at home."

I believe that her inability to work is directly related to her claimed back and leg problems.

7. The petitioner's treating physician has seen her on at least six occasions since last June and formed the impression that she was suffering from back pain and depression on a persistent basis. He is of the opinion that she can sit, stand or walk for somewhat less than six hours and can never stoop, crouch or crawl. Her reaching is limited. She can occasionally climb, balance or kneel. He stated that she could not do a job which "involved mostly sitting but which could also require occasional walking and standing and the ability to occasionally lift objects weighing up to ten lbs." He concluded by saying, "in my opinion, she is disabled at this time secondary to low back pain. A thorough work up has not yet been done . . . due to lack of funds and both a more specific diagnosis and a prognosis cannot accurately be made until this is done."

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 petitioner's treating physician believes she has severe restrictions regarding sitting, walking, standing, lifting, bending, and carrying which are consistent with her own testimony and not contradicted by the opinions of the two other doctors who have seen her. As such, it must be found that the petitioner is not even capable of "sedentary work" as that term is defined in the Social Security regulations:

Sedentary work involves lifting no more than two pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a)

The petitioner's back pain and resultant motion limitation are at least equal to those restrictions in the listings of impairment for disorders of the spine found in

the Social Security Regulations at Rule 1.05 of 20 C.F.R. § 404, Subpart P, Appendix 1:

1.05 Disorders of the spine:

- A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray evidence of:
  - 1. Calcification of the anterior and lateral ligaments; or
  - 2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or
- B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:
  - 1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or
  - 2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or
- C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 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 motor loss with muscle weakness and sensory and reflex loss.

It also appears that the petitioner's current level of severity has existed since at least June of 1990, and shows no sign of diminishing unless the specific cause of her problem is diagnosed and some adequate remedy is found. As such, the petitioner must be found to be disabled under 20

C.F.R. § 416.920(d) and § 416.905(a).

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