

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,555
)
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 sixty-three-year-old woman with a twelfth-grade education. Besides some limited jobs on a friend's farm, she has no relevant work experience.

The petitioner's chief physical complaints are difficulties with breathing and leg pain. She is a long-time smoker and has been diagnosed as having chronic obstructive pulmonary disease (C.O.P.D.). She maintains that her problems are worsened by even slight exertion such as short walks and household chores.

Because of financial difficulties (she subsists on G.A.) the petitioner has not sought medical attention on a regular basis. She was hospitalized in December, 1990, for chest pains, but a heart attack was ruled out. Pulmonary function tests done in June, 1990, and February, 1991, both indicated significant deficiencies.¹

A physician she visits periodically--primarily to fill out G.A. disability forms--has at various times listed the petitioner's problems as C.O.P.D., arthritis, chronic bronchitis, bicipital tendonitis, and leg pain. On a report form dated March 26, 1990, this physician checked that the petitioner would be unable to work any full-time job for "six months." On forms dated June 27, 1990, and September 9, 1991, he checked that such disability would last "one year" (the longest durational choice available on the form).

The petitioner underwent a consultative examination in March, 1992. The report of that examination concludes with the following "impression":

1. Probable chronic obstructive pulmonary disease secondary to tobacco use. By patient description she (is) limited to approximately one block exertion, approximately ten minutes of moderate level exertion such as sweeping or vacuuming at a time. Further evaluation of pulmonary function tests is recommended. It is uncertain to what extent her functional capacity would improve with medication treatment but she says the point is moot at present because she cannot afford either a doctor's care or medications.
2. Mitral valve prolapse without mitral regurgitation and currently asymptomatic. ECG done today shows minor nonspecific ST-T wave changes. She has a past history of atypical chest pain which may have been related to the mitral valve prolapse, but has not had any recent problems with this.
3. History of leg weakness when walking. I cannot find any explanation for this on physical examination.

Based on the above reports and on the petitioner's testimony and demeanor at the hearing it is concluded that the petitioner is certainly unable to perform the demands of "medium work" as defined by the regulations--being on her

feet all day, frequently lifting twenty-five pounds, and occasionally lifting fifty pounds.² Under the regulations, considering the petitioner's age, education, and work experience, this is sufficient to establish disability (see infra).

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.

Because of the petitioner's advanced age, level of education, and marginal work history, the regulations dictate that the petitioner be found disabled if her residual functional capacity is for less than "medium work" (see supra). 20 C.F.R. § 404, Subpart P., Appendix 2, Rule 202.04. Since the evidence establishes such a limitation, the Department's decision is reversed.

FOOTNOTES

¹In various subtests on the two pulmonary tests the petitioner's results ranged from 43 to 101 percent of "predicted." On only two of ten subtests ("pre-Bronchodilator"--three of ten "post-Bronchodilator") did the petitioner achieve 90 percent of "predicted." Four of the ten tests were less than 60 percent.

²See 20 C.F.R. § 416.967.

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