

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,663
)
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 fifty-year-old woman with a twelfth grade education. She has worked as a sales clerk and as a factory machine operator. She last worked (as a machine operator) in January, 1991, when she was laid off due to lack of work.

The petitioner complains of chronic pain in her back, neck, and legs. She also has frequent headaches and diarrhea. She has a history of asthma and bronchial infections.

The petitioner has been receiving chiropractic treatment for her headaches and back problems since 1988. In August, 1991, her chiropractor stated that the petitioner was limited to "occasional" lifting of up to fifty pounds and that the petitioner could not sit, stand, or walk for more than one hour of an eight hour workday. At that time the chiropractor also stated:

[Petitioner] states that she has headaches almost constantly and if this is the case, and they are as frequent and severe as she states, then these could hinder her getting a job and/or performing normal work duties when she gets a job.

The next report from the petitioner's chiropractor (addressed to the petitioner's attorney), dated December 6, 1991, states:

In response to your letter of 11/27/91 the following is an update on [petitioner's] condition.

[Petitioner] began having an episode of low back pain about 10/21/91. This became progressively worse and she eventually was treated at this office for acute low back pain. She also went to [physician] (orthopedist) for an evaluation. His initial thoughts were that she was suffering from a central disc bulge or herniation and he ordered a CAT scan. The results of this was negative for disc lesion. She was given Medrol and Tylenol for her pain and in view of the negative CAT scan she was to be seen on a PRN basis. Those reports were about November 14. We saw her on a fairly intensive basis from 11/14 through 11/26. Examination indicates that she has a pinched nerve in her back and this may prove to be painful for some time.

My diagnosis at this time is vertebral subluxations of the L4, L5 vertebrae as well as a Fascet syndrome. Both these conditions are pain-producing and cause swelling which could produce the radicular types of pain which she has.

My last visit with [petitioner] was on 11/26/91. She states she was taking Zindopin prescribed by [physician]. She continued to have low back pain, and was unable to lay in a prone position due to the increased pain in her low back. In her present condition it does not appear that she would be able to hold a sedentary job because of continuing symptomatology.

Generally such cases require fairly intensive treatment for a period of time and I suggested this to her. However, I have not scheduled her for this type of treatment due to her ongoing financial difficulties. Rather, I schedule her on a PRN basis.

As noted in the above report, the petitioner has also seen an orthopedist for her back pain. Office notes from this orthopedist indicate that the petitioner was in "a fair amount of distress" on November 4, 1991. At that time a CAT scan was ordered and the petitioner was advised "five days of complete bed rest".

On November 12, 1991, the orthopedist noted that the CAT scan was "negative", but that the petitioner's pain was "worse". On November 24, 1991, it was noted that the petitioner's "pain persists". At that time the orthopedist diagnosed the petitioner's problem as "just L5 strain". On January 11, 1992, the orthopedist noted the petitioner was "still symptomatic". His notes of that visit also include the following comments:

. . . still having constant low back pain which tends to radiate into the right leg. Medication has not helped her. She has not been helped by the Darvocet. Helped by rest. Her main problem is that she can't sit. When she stands or walks her symptoms seem to be better.

On exam there is not much change. He back is supple. SLR test is negative. Neurological is within normal limits.

Impression: Chronic low back pain with acute exacerbation. No evidence of nerve root pressure.

On December 11, 1991, the petitioner underwent a consultative examination by an internist. In that report it was noted that the petitioner alleged she had not been able to sit since October 16. Although his examination of the petitioner was unremarkable, the internist noted: "She does genuinely seem to be in pain with sitting." The internist

also noted the petitioner's complaints of headaches, and opined that they were "most likely muscular contraction in origin."

The medical record also includes a recent assessment from the petitioner's chiropractor (presently, her primary source of treatment¹) that includes the following:

As I indicated in my correspondence to you on December 6, 1991, people with the degree and nature of [petitioner's] symptoms usually require treatment over an extended period of time. It would not be unreasonable, in [petitioner's] case, to anticipate that it may take 12 months or longer to resolve her symptoms, particularly given the fact that her financial constraints prohibit on-going, intensive treatment.

Based on the above reports, and considering the testimony and demeanor of the petitioner at the hearing, it is found that since August, 1991, the petitioner's headaches and back pain have precluded her from performing any substantial gainful activity and that, most likely, the petitioner will continue to be unable to perform substantial gainful activity for at least twelve consecutive months. Prior to August, 1991, however, it is found that the petitioner was capable of performing at least "light work".²

ORDER

The Department's decision is modified. The petitioner is found to be disabled as of August, 1991, for a period of at least twelve consecutive months.

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.

As noted above, the medical evidence in this matter establishes that the petitioner met the above definition as of August, 1991.³ The Department's decision is modified accordingly.

FOOTNOTES

¹The petitioner's chiropractic treatment was specifically noted and sanctioned by her orthopedist.

²See 20 C.F.R. § 416.967(b). Under the regulations a person of the petitioner's age, education, and work experience must be found "not disabled; if she is capable of performing "light work." 20 C.F.R. § 404, Subpart P., Appendix II, Rule 202.13.

³The petitioner's application for Medicaid was dated May 8, 1991.

#