

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,890
)
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 twenty-eight-year-old man with an eleventh-grade education. His only work experience is unskilled construction labor.

In August 1988, the petitioner shot himself in the head in a suicide attempt. By June, 1989, he was recovered sufficiently to attempt to return to his former construction job. After three months of inconsistent performance and frequent absences, he could no longer perform the job. He also made two brief work attempts in 1990.

The petitioner's treating physician (a neurosurgeon) had indicated in May, 1989 that the petitioner did not have any physical limitations concerning "non-strenuous work". However, after several work attempts (albeit at jobs that were strenuous, see supra) the petitioner was hospitalized for surgery at least two times in 1990 for cerebrospinalfluid

leaking into his nasal passages and for meningitis. In a note dated July 31, 1991, the petitioner's treating physician stated: [Petitioner] has been in my care for problems of a spinal fluid leak and continues to have severe headaches which have prevented him from any gainful employment.

In August, 1991, the petitioner was again hospitalized with severe headaches and sinus drainage. At that time, tests for continuing fluid leaks were negative. On discharge, medication was prescribed. There is no evidence, however, that the petitioner's headaches have ever been "controlled" with medication.

In September, 1991, the petitioner underwent a comprehensive psychological evaluation on a consultative basis (for D.D.S.). The report of this evaluation contains the following "conclusions":

[Petitioner], 28-year old male, who appears to be of about low average intelligence, functioned within normal limits on a neuropsychological battery.

This young man's difficulties appear to lie in the area of emotional and personality functioning. A diagnostic impression of a "Borderline Personality Disorder" has been formulated and presented based on this assessment. (See discussion above.)

This man also stated that he has been advised by his physicians that he should consider himself to be significantly physically handicapped to the degree that he cannot work and that he needs to exercise extreme caution in his routine daily activities. This advice was apparently given to him as a means of precluding further effects of a brain injury he suffered via a self-inflicted gunshot wound to the head. (The examiner did not have relevant medical reports to corroborate this statement by the patient; he assumes DDS has such information.)

Capability> Competence to manage funds: Satisfactory.

Employment: If medically cleared, suggest this might not present a problem as long as mood stabilized although I think the prognosis in this area is guarded. If, as the patient indicates, he can no longer perform physical labor, he will need to be retrained. If the personality disorder as discussed above is present, both training and employment are likely to be significantly problematic areas.

Based on the above reports (which are uncontroverted), it is found that the petitioner, since 1989, has been unable to perform any substantial gainful activity on a regular and sustained basis.

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.

As noted above, uncontroverted medical evidence establishes that the petitioner meets the above definition.

The Department's decision is, therefore, reversed.

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