

from the petitioner's employer describes the petitioner's first few days on the job:

I, [name], being duly sworn, depose and say:

1. I am the Town Clerk of [town], Vermont and work in [town] town hall.
2. [Petitioner] started working in the [town] town hall on August 21, 1991 as the selectman's clerk.
3. Schedule adjustments were made for [petitioner's] illness, allowing her to do just what she was capable of doing until she recovered. Her schedule was not set until early September.
4. [Petitioner] was often dizzy and extremely tired at work at least until September, 1991.
5. [Petitioner] took rest breaks from her work as selectmen's clerk every half hour at least through August 26, 1991, due to her dizziness and fatigue.
6. [Petitioner] was unable to concentrate well at her job as selectmen's clerk due to her dizziness and fatigue until at least August 31, 1991.
7. [Petitioner] was forced to leave work early due to dizziness and fatigue during August, 1991 at least twice.
8. [Petitioner] was not physically able to perform all but the least strenuous of her job duties until early September, 1991, due to her dizziness and fatigue.

In determining that the petitioner was not incapacitated for at least thirty days, the Department relied on a report from the petitioner's treating physician dated August 20, 1991, that noted that the petitioner's had had a "normal exam" on that date and that checked "yes-- starting August 20, 1991" as to whether the petitioner could "presently work thirty-five hours per week at his/her usual

occupation." The report also noted, however, that the petitioner "still (has) intermittent abdominal cramps."¹

Based on the above, it is found that, despite her physician's August 20th assessment, the petitioner continued to suffer cramps, dizziness, and fatigue at least until September 1, 1991. Furthermore, despite the fact that her doctor had cleared her for full-time work, the petitioner, even with her employer's accommodations, was in fact unable to work even twenty hours per week at least until September 1, 1991.

ORDER

The Department's decision is modified. The petitioner is found eligible for Medicaid for a closed period, August 1 - 31, 1991.

REASONS

Parents of minor children can qualify for Medicaid if they can demonstrate that they are "categorically related to the ANFC program" and have medical expenses above the applicable "protected income levels" of the Medicaid program. Medicaid Manual § M 300C. The issue in the petitioner's case is whether she was "related" to ANFC by virtue of her "incapacity."

Medicaid Manual § M 326 defines "Incapacity of Parent" as follows:

A child is deprived of "parental support" when a parent is unable, due to his physical or mental condition, to maintain his earning capacity for a period of not less than thirty days from the date of application. If,

however, an incapacitated parent works 35 hours per week, even though his earnings may be inadequate, the family is not eligible due to incapacity. A parent may be found incapacitated if unable to perform the duties as he has defined his role; e.g., defined role as a homemaker and is unable to carry out these duties due to the incapacity.

Section M 326.1, "Incapacity Decisions", includes the following.

Incapacity decisions are made by the Division of Vocational Rehabilitation of the Vermont Department of Social and Rehabilitation Services. Decisions are based on medical or psychiatric information plus, when necessary, non-medical evidence such as employment and living arrangements.

The above definitions clearly state that an inability to perform full-time work (i.e. thirty-five hours a week) for a period of thirty days is sufficient to establish "incapacity." As found above, the petitioner was totally disabled from August 1 through August 20, 1991. Admittedly non-medical but, nonetheless, compelling evidence further establishes that the petitioner was unable to work even twenty hours a week until September 1, 1991. Under the above regulations this is sufficient to conclude that the petitioner met the criteria for "incapacity" from August 1 - 31, 1991. The Department's decision is modified accordingly.²

FOOTNOTES

¹The report also indicates that the petitioner had had her spleen removed some years before. This appears to have contributed significantly to the severity and duration of the symptoms the petitioner experienced.

²The Department should, on remand, determine the petitioner's income and resources for August, 1991, to

arrive at the level of Medicaid coverage.

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