

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,955
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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-one-year-old man with an eighth-grade education. He last worked (as a janitor) in 1989.

The petitioner has a history of psychological problems. He has been involved in individual and/or group therapy for several years. He was hospitalized for several days in July, 1991 when he appeared to be suicidal. He has recently been diagnosed as being H.I.V. positive.

The most recent medical assessment of the petitioner is contained in a September, 1991, report from a psychiatrist at the county mental health service where the petitioner had sought treatment. The report concluded with the following:

Impressions: This is a man from an extremely dysfunctional background. This point in time does not exhibit any symptoms or signs of major mental illness including biological depression, schizophrenia, panic disorder or obsessive compulsive disorder. I believe

that his diagnosis will primarily fall into realm of character disorder and most probably as an inadequate personality of some sort possibly a narcissistic dependent borderline or antisocial personality.

In addition there is some evidence in discrepancies in his tests for various academic skills. Mathematics is not bad and his general knowledge is fairly poor. I would wonder if he doesn't have some dyslexias or other learning disabilities. This was apparently observed while he was in school and we will attempt to obtain the records from his early schooling when he was in special ed.

As an Axis III Diagnosis most significantly he has been told that he is HIV positive.

In terms of prognosis I would expect that he would continue to function in a fairly marginal level but he does relate that he has been able to hold jobs in the past possibly could be doing so at this point in time. He demonstrates a considerable amount of externalizing of blame for his difficulties. I suspect that this is a symptom of his characterological dysfunction. It will interfere with his ability to hold a job. However he was anxious to present himself in a good light for example in that he lost his job as a nurses aide, it was after a charge of hitting a patient had been dropped. In addition he gave the examples of his mother and siblings sabotaging his relationship with women blaming them for the loss of his relationships. This tendency to externalize blame will make it difficult for him to make any improvements in himself as he does not see his problems as coming from within himself but rather from people around him. The expectation is that he will probably continue in his somewhat tramutulous (sic) relationship with his current lover.

Plan: He can return as needed and I do think we should make some effort to obtain his old records especially around his disability and his hospitalization for overdoses in the past.

Based on the above assessment (which is uncontroverted) it is found that although it is "possible" the petitioner could work, a preponderance of medical evidence establishes this is unlikely, and that the petitioner will "continue to

function in a fairly marginal level" due to his psychological problems.

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, a preponderance of the medical evidence establishes that the petitioner meets the above definition.

The Department's decision is, therefore, reversed.

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