

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,095
)
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 who completed twelve grades of school in a special education placement. Since completing school he has worked with limited success at a nursing home and in a supermarket in positions "developed" for him through special education services and the Department of Vocational Rehabilitation (V.R.) (see infra).

In addition to his limited intellectual abilities the petitioner has a history of depression thought to be associated with sexual abuse he suffered as a child. He was a client of a county mental health service from October, 1988, through March, 1989. In a report dated January 14, 1992, his psychologist during that time described this period as follows:

In October 1988, school personnel contacted [agency] about [petitioner]. They were concerned about possible suicidal ideation and depressed feelings due to a note

he left for one of his teachers. He was seen on an emergency basis to address these concerns and remained in treatment until late March 1989.

During the course of treatment, several issues were addressed, including limited social skills, identity issues, and lack of activity (fun, exercise). The central issue around which these revolved was the sexual victimization by a family member when he was a child. It is clear that, years after the incidents, [petitioner] was significantly traumatized by this victimization. He choose to terminate therapy in March 1989. There were several community care providers involved with him and his family. [Petitioner] felt overwhelmed by the number of people involved and sought some control over this by ending treatment here.

He received Special Education services throughout his school career, having a learning disability in the area of language. He also received some vocational services through school and the community.

There has been no contact since March 1989.

In December, 1990, the petitioner underwent consultative intelligence testing and a clinical psychological interview. This yielded I.Q. scores in the mid-seventies and the following "conclusions and recommendations":

The above data indicate the (petitioner)'s overall level of measured intellectual functioning is in the Borderline range. Achievement testing also reveals that (petitioner) is deficient in both visual and auditory modalities. In addition, the clinical interview and Mental Status Examination suggest some mild to moderate symptoms of depression in this young man.

In January, 1992, the petitioner returned to the same psychologist for a consultative psychological examination. This yielded a bleaker picture of the petitioner's status than the December, 1990, exam (supra), as evidenced by the following "conclusions and recommendations":

The above data indicate that [petitioner] is

experiencing a depressive neurosis. He also demonstrates symptoms of an anxiety disorder. His performance on the Mental Status Examination and previous psychometric testing give support to a diagnosis of Borderline intellectual ability.

The following DSM III-R diagnostic configuration is suggested by the current data:

Axis I	300.40	Dysthymia, Secondary Type, Early Onset.
	309.89	Post-Traumatic Stress Disorder
Axis II	V40.00	Borderline Intellectual Functioning
Axis III		Not Assessed.
Axis IV	3	Severity of Psychosocial Stress - Moderate.
Axis V		Global Assessment of Functioning Scale (GAF) Current: 60. Highest: 65.

[Petitioner] has a relatively restricted range of daily activities. He does have some hobbies which he engages in but these are activities that he does alone. This young man is quite social and appears to enjoy social interaction but may have little opportunity to do so. His attention and concentration and memory functioning are reported in the context of the Mental Status Examination. Should any funds be awarded to this young man, I feel it would be in best interest to have someone oversee management of them.

It is strongly recommended that the client be encouraged to return to counseling to help him deal with his past history of sexual abuse. [Petitioner] indicated that he was interested in being involved in counseling and that he found previous counseling helpful.

The petitioner's work history is extremely limited. In March, 1989, while still in high school, the petitioner was placed in a job doing laundry in a nursing home. For the first several weeks on the job he was accompanied by a counselor who gave him continuous support and directions.

After the counselor left, the petitioner was unable to keep up and was eventually fired (in November, 1989) for being "too slow".

Since November, 1990, the petitioner has been a client of Vocational Rehabilitation. Accompanied by a V.R. training specialist who "developed" the job for him, the petitioner worked at a local newspaper on a three month trial basis. The job consisted of labeling papers for mailing. However, after the trial period, the petitioner was unable to perform the job to the employer's satisfaction and was not hired.

Recently, V.R. has developed another job for the petitioner at a local supermarket. The job has limited duties, and the petitioner continues to rely heavily on his V.R. trainer for support, instruction, and getting to work and getting his work done on time.

The V.R. trainer testified that the petitioner is unable to "start" any job and learn it without assistance. He needs "development" help for interviewing and training, and ongoing "support" for adjusting to bosses and co-workers. V.R. continues to provide help to the petitioner in filling out applications for benefits and housing, and in getting the petitioner to appointments (e.g., doctors and hearings).

In a report dated June 5, 1992, the petitioner's V.R. counselor (a different individual than the "trainer" who accompanied the petitioner to the hearing and testified in

his behalf) offered the following summary of how V.R. views the petitioner:

I am a counselor at Vocational Rehabilitation, and I have had [petitioner] as a client since November 1990. [Petitioner] qualified for V.R. services because he was evaluated as "severely disabled" due to the psychoneurosis of severe depression, and because of his borderline mental retardation.

Over the course of my contact with [petitioner], I have found him very cooperative and willing to try job placements, take tests, etc. While willing and cooperative, he does have severe limitations as to his ability to be employed due to his overall slowness in learning, and his speech, which is sometimes hard to understand. His limitations also cause problems with interpersonal relationships when others expect too much from him. I feel that he will always need a sheltered workshop type situation with an employer who understands his limitations, and who takes them into account. I also feel that he will need ongoing support from V.R., or some other type of agency in order to maintain employment.

Based on all the above it is found that the petitioner has not yet reached the point where he is able to engage in competitive employment on a regular and sustained basis. To work at all, the petitioner needs continuing support and development through V.R. and significant accommodations by any employer.

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.

In this case uncontroverted medical and vocational evidence establishes that the petitioner is unable to perform substantial gainful activity as defined by the regulations.¹ See 20 C.F.R. § 416.973. Therefore, the Department's decision is reversed.

FOOTNOTE

¹The statements and testimony of the V.R. specialists are entirely consistent with the medical evidence.

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