

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,109  
 )  
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 fifty-year-old man with an eighth grade education and a work history of unskilled manual labor. He has not worked at all for the past three or four years.

The petitioner has a history of somatic complaints, primarily aching and numbness in his lower right leg that, so far, has eluded firm diagnosis. The medical record indicates that the petitioner's treating physician believed the problem is related to varicose veins. However, a neurologist who examined the petitioner in September, 1991, doubted this diagnosis, but admitted he had "no idea" what was causing the petitioner's leg problems. The neurologist did state, though, that the petitioner "does seem to have fairly consistent tingling and discomfort in the leg which is focal and what appears to be neurologic in origin." Further testing was recommended.

A larger problem for the petitioner, however, at least in terms of employability, appears to be long-standing psychological problems. In October, 1991, the petitioner underwent a consultative psychological evaluation, which yielded the following "Conclusions and Recommendations":

The above data are consistent with a characterological disturbance and with a past and possibly current history of alcohol use disorder. The findings also suggest that this man is of Below Average intelligence. No level of measured intellectual functioning can be provided because psychometric testing was not performed, since this was not requested.

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

	Axis I	Rule Out	Alcohol Dependence Versus Alcohol Abuse.
	Axis II	301.90	Personality Disorder, Not Otherwise Specified (Anti-social Traits, Traits)
Schizotypal			
	Axis III		Not Assessed.
	Axis IV	4	Severity of Psychosocial Stress - Severe.
	Axis V		Global Assessment of Functioning Scale (GAF) Current: 50. Highest: 50.

This man did not demonstrate any significant pain behaviors during the evaluation session. It appears that the client's activities are very limited but it was extremely difficult to obtain information from this man regarding his daily activities. Apparently, he is very restricted in his range of interests. [Petitioner's] ability to relate to people is less than adequate. The client has a rather unkempt and odd appearance and tends to smile excessively and inappropriately. There was no evidence of a significant problem with attention and concentration or with memory. Based on the current findings and client's past social history, I feel it would be in his

best interest that any funds that might be awarded be managed by a responsible individual.

More recently--since March, 1992--the petitioner has been seeing a psychotherapist on a regular basis. A report dated April 30, 1992, from this therapist included the following observations and responses to a questionnaire provided by the petitioner's attorney:

The temporary diagnosis of Adjustment Disorder with Depressed Mood has been adjusted to the diagnosis of Major Depression (DSM IIIIR 300.40) which also coincides with The Beck Depression Inventory (Severe Depression).

I presently see this depression as limiting [petitioner's] productivity; however, it is possible with treatment that he will be able to be on the job part-time within several months. It is difficult to determine when he will be able to return full-time.

During the first few sessions it was difficult to establish rapport with [petitioner], but as of late he has cooperated more with treatment and shown progress, certainly, being more open in therapy.

. . .

[Petitioner] suffers from depression which is characterized by:

1. Anhedonia or pervasive loss of interest in almost all activities;

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Appetite disturbance with change in weight;

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Sleep disturbance;

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Psychomotor agitation or retardation;

YES \_\_\_\_\_ NO \_\_\_\_\_

5. Decreased energy;

YES \_\_\_\_\_ No \_\_\_\_\_

6. Feelings of guilt or worthlessness;

YES \_\_\_\_\_ NO \_\_\_\_\_

7. Difficulty concentrating or thinking;

YES \_\_\_\_\_ NO \_\_\_\_\_

8. Thoughts of suicide;

YES \_\_\_\_\_ NO \_\_\_\_\_

9. Hallucinations, delusions or paranoid thinking;

YES \_\_\_\_\_ NO \_\_\_\_\_

[Petitioner's] depression causes him:

1. Marked restriction of activities of daily living;

YES \_\_\_\_\_ NO \_\_\_\_\_

2. Marked difficulties in maintaining social functioning;

YES \_\_\_\_\_ NO \_\_\_\_\_

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere);

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

YES \_\_\_\_\_ NO \_\_\_\_\_

The above reports, which are entirely uncontroverted, establish that the petitioner suffers from a psychiatric disorder that is long-standing (i.e., has been present for at least the past year) and meets or equals in severity the

listing for "Affective Disorders" in the regulations.<sup>1</sup>

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.

Uncontroverted medical evidence from a treating source establishes that the petitioner "meets the listings" for an "Affective Disorder"-- in this case, severe depression.<sup>2</sup> A clear preponderance of evidence also establishes that this problem has been present for at least a year. Therefore, the Department's decision is reversed. 20 C.F.R. 416.920(d); 3 V.S.A. § 3091(d); and Fair Hearing Rule No. 19.

FOOTNOTES

<sup>1</sup>20 C.F.R. § 404, Subpart P., Appendix I, Section 12.04 describes "Affective Disorders" as follows:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves

either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions or paranoid thinking; or

. . .

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
- 4. Repeated episodes of deterioration or decompensation in work or work-life settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

<sup>2</sup>Id.