

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,144
)
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-two-year-old man with twelve grades of education. His work history is primarily as a mechanic but he has not worked at all since 1988.

The petitioner has a history, including several hospitalizations, of bipolar illness and severe depression. Separate psychiatric and psychological consultative examinations performed in 1991 and 1992 noted limited intelligence and insight, a flat or blunt affect, and an overall demeanor of sadness in the petitioner. In a note received in February, 1993, the petitioner's family physician opined:

I am [petitioner's] primary care physician and have personal knowledge of his present health and physical condition.

[Petitioner] is suffering from bi-polar manic depression, reflux esophagitis and narrowed distal esophagitis. It is my opinion within a reasonable degree of medical certainty, that the resumption of full time or

substantial work for [petitioner] would significantly aggravate and worsen his condition and health.

He would not be able to work on a sustained basis without this occurring. The stress of such a situation would be more than he could handle without adverse health consequences.

In a letter dated April 29, 1993, the petitioner's treating psychiatrist described his problems as follows:

[Petitioner] has been seen for the past six months at the Howard Center for Human Services and carries the long term diagnosis of Manic Depressive Illness. He remains on Lithium and antidepressants, and is functioning better than when he is off medications. Of late, he has not had manic episodes, rather recurrent depressive episodes during the winters. In my opinion, he is not capable of full-time work, only part-time work during the Spring, Summer and Fall months.

In a subsequent note, dated June 28, 1993, the psychiatrist stated that the petitioner's depressive episodes during the winter have occurred since 1983-84.¹

Following the submission of the above evidence, which was uncontroverted, the Department indicated that it did not wish to attempt to rebut what the hearing officer considered to be the petitioner's prima facie showing of disability.²

Therefore, it is found, based on the above, that for the last

¹It appears from the record, however, that the petitioner has only received infrequent and sporadic services from the community mental health service with which the psychiatrist is associated. Primarily, it appears, his contact with the psychiatrist has been to maintain his regimen of Lithium and anti-depressant medications.

²The Department's burden of proof would have been to demonstrate through expert vocational testimony that seasonal part-time work would constitute substantial gainful activity and that such jobs exist in substantial numbers in the national economy which would also be undemanding in terms of stress.

several years the petitioner has not been able to perform any substantial work 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.

In this case the petitioner has made an unrebutted prima facie showing that he cannot perform any substantial work activity on a regular and sustained basis. The Department's decision is, therefore, reversed.

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