

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,177  
 )  
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

1. The petitioner claims a closed period of disability for a period of time from December 13, 1991 through November of 1992 when he was twenty-eight years old. He is a high school graduate who has worked primarily as a cabinetmaker, laborer, and most recently as a roofing and siding carpenter.

2. In August of 1991, the petitioner first developed flu-like symptoms (fever, nausea and fatigue) while he was working as a carpenter. Those symptoms never entirely left him for the next few months, although he did not seek medical care until late November of 1991. Based upon blood tests, which were somewhat conflicting, the record shows that his physician diagnosed him as having atypical lymphocytosis, a viral infection, and that she advised him not to work and to rest until it resolved. The petitioner stopped working on December 19, 1991.

3. At that same time, the physician referred the

petitioner for a lymph node biopsy to rule out a more serious illness. That biopsy was performed December 19, 1991, but the petitioner was not notified, through an administrative error, that the results were normal until January 9, 1992. He was assured at that time that he did not have cancer.

4. In January of 1992, the petitioner engaged a new treating physician who saw him once per month and performed regular blood tests. By May of 1992, the laboratory tests showed that the petitioner's viral infection, which had never been specifically named in a diagnosis, had essentially resolved. The medical evidence does not suggest any further physical problem after that date.

5. In spite of the medical records which show that the petitioner was diagnosed by both treating physicians as suffering from a viral infection, the petitioner believed that he was suffering from a terminal illness. He was under the impression that his original physician had told him to "get his life in order" and that his second physician had advised him that he should go back to work even though he might be dying. He saw a psychologist on one occasion in May of 1992 who reported (in May of 1993) that the petitioner was "depressed and anxious believing he had leukemia and was going to die . . . he was not sleeping, had lost 57 pounds, was impotent, unable to concentrate, and was thoroughly miserable." He stated that the petitioner suffered at that time from major depression accompanied by anhedonia, sleep

disturbance, weight loss, decreased energy, feelings of worthlessness, difficulty concentrating or thinking and suicidal thoughts. These symptoms interfered with his ability to function on a daily basis, moderately interfered with his social interaction and caused him to be unable to work. He concluded that the petitioner "was absolutely unable to function in any work capacity when I first saw him in May of 1992 and probably for several months before that". As this assessment is consistent with the testimony offered by the petitioner, it is found to be accurate as to his initial intake in May. Even so, the petitioner does not appear to have been in treatment for his depression and did not see the psychologist again until November of 1992.

6. There are no medical records from June through September of 1992. The petitioner apparently did not seek physical or psychological care during this period of time and did not explain his failure to do so. In August, he did, however, on the advice of his physician, make an appointment with a specialist in internal medicine to get another opinion on his condition. He saw that physician on October 26, 1992, who noted in his case record that the petitioner had only a few small swollen lymph nodes and that he reported feeling quite well although he was anxious about his abnormal test results. In a case note dated October 27, 1992, the specialist stated:

This [the original abnormal blood test] is almost

certainly the result of some viral infection. Despite a negative monospot, infectious mononucleosis is the most likely diagnosis, although any other viral infection could produce a similar pattern...I discussed with the patient at length the overwhelming likelihood that this is a self limited illness which has resolved...

7. At his hearing on November 12, 1992, the petitioner stated that he realized that he did not have a terminal illness and felt that he had turned a corner a couple of weeks earlier when he finally became convinced that he was not seriously ill. He felt, however, that he had been unable to work for many months both because of his illness and depression over his belief that it was fatal. During the month of November 1992, the petitioner went back into counseling to resolve these issues. His psychologist (the same one he saw in May) stated in his May 1993 report that:

Later (November, 1992) after he learned that he did not have leukemia and was going to be okay after all he became angry at the "system" that had turned his life upside down. The energy from this anger was instrumental in his coming out of his depression and his deciding to put his life back together and look for work... By the end of November 1992, I believe normal functioning had pretty much returned and he was actively looking for a job.

8. Following the hearing, the petitioner obtained an attorney who was later replaced by another attorney which caused a delay of some seventeen months before all the additional evidence was submitted. In addition to the psychologist's report mentioned above, the petitioner also submitted a form in March of 1994 (dated February 1993) from the physician who treated him from January through April of

1992, documenting the dates of treatment and opining that the petitioner "gradually improved" after April of 1992 and adding that, "[h]e certainly suffered a syndrome of disease with impairments of strength, bodily function, and mental status that prevented him from doing any kind of work from August 1991 to at least August 1992 and perhaps longer". He based much of his opinion on his belief that the petitioner "was impacted adversely, frightened and depressed from a medical diagnosis that turned out to be more severe than was warranted".

9. The latter assessment by the treating physician as to the dates of his disability cannot be accepted as controlling in this instance because it is not based on periods of time of which he had knowledge and is contradicted by substantial evidence in the record including, most importantly, the sworn testimony of the petitioner himself.

10. Based on the above evidence, the following specific findings of fact are made:

a. The petitioner was first unable to work due to his viral infection on December 19, 1991.

b. The petitioner, due to both the viral infection and depression, was unable to work at least through May of 1992.

c. There is no evidence as to whether the petitioner had a condition severe enough to prevent his working from June through November of 1992. The medical evidence shows his physical impairment ended by May of 1992. There is no

evidence that his mental impairments remained severe through the next few months, as the petitioner ceased seeking treatment for those problems. His own testimony about his functioning was vague.

d. Even if it could be assumed that the petitioner continued to suffer from major depression after May of 1992, the petitioner's testimony was that his outlook changed after he spoke with the specialist in late October. The psychologist's statement that the petitioner returned to normal functioning by the end of November does not support a finding that the petitioner's condition was disabling from either May to late November or from late October to late November of 1992. The petitioner's testimony at the hearing on November 12, 1992, indicated in fact that, at the very least, he had felt up to returning to work for the last two weeks (from October 27, 1992 onward).

e. Even if the petitioner had shown that he was unable to engage in work activities until the end of November, he still fell short of showing that he had been unable to work for twelve consecutive months.

f. The petitioner has not shown under any interpretation of the evidence that he was unable to work for a continuous period of at least 12 months due to a severe medical impairment.

ORDER

The Department's decision is affirmed.

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.

The petitioner in this matter had a severe, but temporary, physical condition which prevented him from working for some four or five months beginning in mid-December. His misunderstanding about the seriousness of his medical condition caused him in addition to become depressed and, at least through the month of May, 1992 he was unable to work due to that problem. After that the medical record is silent until October 26 when a physician finally assured him that he was not terminally ill. Even if it is assumed that he was disabled by depression throughout the interim (although he sought no treatment), the petitioner cannot be found to have been disabled continuously for twelve consecutive months. Without the twelve months, the petitioner cannot meet the definition for eligibility.

The petitioner argues that his treating physician's assessment that he was disabled from August of 1991 through

August of 1992 "and perhaps longer" should control to find that he has a year's duration. However, the evidence presented by the petitioner himself was that he was working making \$8.00 per hour until December 19, 1991, contradicts his physician's assertion that he could not work since August 1991. The petitioner also argues that he should not have been found able to work for the month of December since he earned less than \$500.00 and that his work was, therefore, not substantial or gainful. That rule the petitioner relies on (20 C.F.R. § 416.974) is one which is only a guide to determining whether a person is engaging in substantial and gainful activity and does not bind the fact-finder to any particular operative beginning date for the year long duration requirement when the evidence suggests something different.

Although the petitioner's situation is sympathetic, the Medicaid statutes are not designed to cover persons with temporary disabilities. Under the regulation cited above, a temporary disability must be any amount less than a full twelve months. Even if the petitioner had been persuasive about his claimed final date of his disability (November 30, 1992), he still falls short of the twelve month period. As such, the petitioner's claim must be denied.

# # #