

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,183
)
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 forty-eight-year-old man with a seventh-grade education. He has worked as an exterminator and in heavy construction.

The petitioner has a history of kidney stones and what has been described as an "adjustment disorder". The petitioner was hospitalized in September, and again in November, 1991 for severe renal pain. In a December, 1991, letter to DDS the petitioner's treating physician noted that the petitioner had had "recurrent nephrolithiasis" since April, 1991, and that the petitioner had "a complicated medical problem". However, at that time the treating physician thought that, pending further evaluation, the petitioner's condition would improve.

In a report dated April 7, 1992, the treating physician offered the following comments on the petitioner's

condition:

I have seen the denial of disability benefits for [petitioner] based on the recommendation of [pediatrician]. I disagree with her conclusion.

[Petitioner] has been a patient under my care since April, 1990. He has a long history of recurrent bilateral nephrolithiasis. He has had numerous hospitalizations due to recurrent renal colic. (See attached reports). He was found to be hypercalcemic. He also had left hydronephrosis secondary to ureteral calculus, bladder calculi, Escherichai Coli urinary tract infections, hyperoxaluria, hypocitraturia, chronic obstructive pulmonary disease, and prostatic hypertrophy.

I recommended to [petitioner] that he have extracorporeal shockwave lithotripsy in Burlington as well as a metabolic workup with [Dr.] a Nephrologist. He had been reluctant to do this due to the fact he has been unemployed and without health insurance.

In September of 1991 [petitioner] experienced increased pain from his bilateral calculi and agreed to ESWL therapy. Since that time he has seen [Dr.] and has had 2 ESWL done by [M.D.] in Burlington. He needs at least 1 more ESWL which is scheduled for April 22, 1992. He also has bladder calculi which will need to be addressed.

I feel that [petitioner] has been totally disabled since 9/91 due to his increased pain and will continue to be disabled until approximately 6/1/92, pending the outcome of his current treatment. See enclosed reports.

On April 24, 1992, the treating physician offered the following update on the petitioner's condition:

[Petitioner] is scheduled for extracorporeal shock lithotripsy, in Burlington, on 4/22/92. If this first treatment for right renal calculi is not successful, it may have to be repeated. [Petitioner] also has an enlarged prostate that is causing voiding difficulty that may require surgery. His bladder calculi also need to be taken care of.

I cannot say with certainty that [petitioner] would be disabled for more than a year, but at this time, I do feel he will be disabled until July of possibly August of this year.

The most recent statement in the record is a note from the treating physician dated June 29, 1992, which accompanied a copy of the petitioner's 4/24/91 discharge summary, stating that the petitioner "has been disabled from 4/24/91 to the present".

Based on the above reports, which, though somewhat inconsistent with each other, are entirely uncontroverted by any other examining medical source, it is found that the petitioner has been totally disabled by pain and discomfort from his kidney stones since April, 1991.¹

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.

Based on the uncontroverted opinions of the petitioner's treating physician (supra) it is concluded that the petitioner has met the above definition of disability

since April, 1991. The Department's decision is, therefore, reversed.

FOOTNOTE

¹There is no evidence that the petitioner's condition improved significantly between April and September, 1991, the two onset dates referred to in the treating physician's reports.

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