

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,191
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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 is a forty-eight-year-old man who has a high school diploma. Most of his work life was spent with the same employer, a commercial dairy, first as a truck driver for five years, and then as a clean-in-place operator for seventeen years. In that latter job the petitioner unloaded trucks and washed products and equipment. He often had to lift up to seventy-five pounds.

2. In September of 1991, the car the petitioner was riding in was hit from the rear by another car and the petitioner suffered whiplash and was briefly treated in an emergency room. He returned to work, but developed pain in his back and a numbness in his leg which prevented him from doing his work. He sought medical treatment and was advised at first to rest and take pain medication. After the pain did not improve, the petitioner was put on a course of physical

therapy from November 1991 to February 1992 and was restricted from working through March of 1992.

3. A myelogram, x-ray and CT-scan of the petitioner's lumbar spine taken in January of 1992 showed no evidence of any spine or disc disease. The petitioner was diagnosed as suffering from a probable muscle spasm. His physician advised him to continue with physical therapy and expected that he would improve after two to four months.

4. In April of 1992, the petitioner's physician signed a statement releasing him for return to light work. Unfortunately, while he was in therapy, his former employer closed down due to bankruptcy and the petitioner was forced to look for another employer. (Although he seriously doubts that he could return to his former job.) He has been unable to secure employment thus far and is collecting unemployment compensation benefits.

5. The petitioner continues to suffer pain on a daily basis which he describes as "bearable" and believes that he could do some type of light work, but has not had an opportunity to test that belief. He still takes medication for pain and sometimes has difficulty sleeping or doing tasks he used to do easily, such as lifting heavy objects and pushing a vacuum cleaner. Exertion definitely increases the intensity of his pain, and he has difficulty standing and sitting for long periods of time unless he takes a break to change positions. He still experiences some numbness in his

right leg, but is able to walk a mile each day for exercise.

6. The petitioner does not claim that he has a mental disability. Records of a psychological examination reveal that he has a dependent personality disorder which effects his ability to motivate himself and may result in some somatic complaints. He also is somewhat depressed as a result of his job loss and is fatigued thereby. However, there is no evidence that either problem causes a significant problem for him in terms of functioning. Clearly, he was able to work for twenty-two years with whatever personality disorder may exist and there is no evidence that his symptoms have grown worse in that area since his accident. It was suggested that the petitioner might benefit from taking a mild anti-depressant or anti-anxiety medication to overcome his fatigue and that having something valuable to do might help him to overcome feeling of helplessness and dependency.

7. From the above evidence, it can be concluded that the petitioner cannot return to his former type of employment based on muscular pain which is worsened by exertion. It cannot be concluded, however, based on the medical evidence and the petitioner's own statements, that he is incapable of doing a job which requires a good deal of sitting and some walking or standing and which would require him to lift no more than ten pounds at a time.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 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.

Under the Social Security regulations, a person who is under the age of fifty, has a high school diploma and is able to do even sedentary work is not disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.18 "Sedentary work" is defined in the regulations as follows:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967 (a)

The petitioner himself believes that he can do "light" work. His physicians also feel that he should be able to do work which is lighter than his previous job. The sedentary category set out above is even less strenuous than what is described in the regulations as "light" work (the ability to

lift 20 pounds occasionally and 10 pounds frequently and to either sit all day or to stand and walk all day). See 20 C.F.R. § 416.967 (b). Therefore, the petitioner at the very least according to the evidence is capable of sedentary work. As such, he must be found not disabled under the above regulation.

The petitioner should be advised that if he does obtain a lighter kind of employment and he finds that he is still unable to perform the activities, he should notify his doctor and reapply for Medicaid at once.

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