

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,266
)
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 twenty-eight-year-old man with a G.E.D. He has worked primarily as a truck driver.

In June, 1991, while driving a truck at work, the petitioner suffered a blackout. Fortunately, he was not otherwise injured, even though the truck went off the road. Although hospital tests were essentially negative, the petitioner's doctors placed him on medication and advised him he couldn't return to his job.

In August, 1991, the petitioner had another loss of consciousness--this time while he was sitting at home. Again, tests were negative, but his medication (Tegretol) was adjusted and his doctors continued to monitor his condition.

Fortunately, the petitioner has not had another episode since the one last August. He has been cleared by his doctors to drive, but he has not yet been able to have his commercial

drivers license reinstated.

The petitioner was last seen by his doctors in February, 1992. The report of that examination is as follows:

This patient is seen in follow-up of a seizure disorder. He reports having had no further seizures since August 18th. Neither his wife nor his co-workers have witnessed any unusual spells and he has not had any difficulty performing his usual activities. He denies any side-effects from Tegretol.

On Physical examination, is found to have a blood pressure of 130/80 with a pulse of 76. Both right and left eyes are 20/20 without corrective lenses. His head and neck are normal, lungs are clear and cardiac exam is regular in rate and rhythm. His abdomen is benign and extremities are without cyanosis, clubbing or edema. He has normal extraocular movements and pupillary reactions. His gait and station are entirely normal.

Assessment and plan: This patient is under good control, and apparently tolerating Tegretol well. I find no evidence of toxicity and will order a Tegretol level today. He is approaching six months since his last seizure and is under good control. Since it is my understanding that the State of Vermont require patients to be seizure-free for six months prior to resuming operation of a motor vehicle, I suggested that he contact the State Department of Motor Vehicles. Since the stipulations against driving are based on State law, he will need to obtain clarification as to whether this certification of six months of good seizure control satisfies State requirements. He has given me a number of forms to fill out. On the obverse side of the forms is the statement that "a person is physically qualified to drive a motor vehicle if he has no established medical history or clinical diagnosis of epilepsy or any condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle".

Since [petitioner] does indeed have a diagnosis of epilepsy, I cannot certify that he is qualified according to these standards. However, since these are not State forms and since it is the State that licenses drivers, it will be necessary for him to clarify the

precise State requirements for operating commercial motor vehicles. The patient was reviewed with [name].

At the hearing (held on July 28, 1992) the petitioner admitted that he had resumed most of his normal activities (e.g., household chores, yardwork, and social activities) but that he has been unable to find work. At the hearing officer's suggestion, the petitioner has applied for Vocational Rehabilitation Services, since it is unclear when, if ever, he will be able to return to his former work.

Based on the medical evidence and the petitioner's testimony it is found, however, that the petitioner can perform a wide range of unskilled jobs, even ones which require significant physical exertion, as long as he is not exposed to unprotected heights or dangerous machinery.

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.

In this case, the petitioner cannot return to his

former work. However, considering his age, education, and work experience, it is clear that according to the "grid" regulations there is a substantial number of alternative jobs the petitioner could perform. 20 C.F.R. § 404, Subpart P, Appendix II. Thus, it cannot be concluded that the petitioner meets the above definition of disability.

#