

For the next three years the petitioner continued to experience severe pain. In 1989, his orthopedist noted:

It is my impression the patient has a spondylolisthesis, s/p spinal fusion with persistent symptoms. I do not feel that he could engage in any vigorous activity or heavy lifting and really practically in any job because he is that symptomatic, does require periods of rest and medication".

The orthopedist's office notes show that the petitioner has remained symptomatic through November, 1990, which appears to be the last date he saw the petitioner.

In April, 1990, the petitioner was hospitalized with pneumonia. His physician at that time noted that the petitioner was "disabled due to chronic medical back".

In April, 1992, the petitioner underwent a consultative medical examination by an internist. This physician described the petitioner's back pain as follows:

He has been treated with a Knight spinal brace which he wears religiously. He has been disabled since the first surgery. It is made markedly worse by bending forward. Additionally, it is worse walking on a hard surface (concrete floor). It is also worse if he sits for more than an hour. He has pain that starts in the left knee and radiates up into the low back. Both legs fall asleep.

The consulting physician's report closes with the following assessment:

1. Chronic low back pain, status post surgery x two with severe residual back pain and limitation of movement.
2. Bilateral shoulder pain, left worse than right, with crepitus in the left.

Based on the above, it is found that for several years the petitioner has been unable to engage in any substantial gainful activity on a regular and sustained basis because of

constant severe pain and limitation of motion.

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 medical record shows that virtually every physician who has ever seen the petitioner has concluded that he is totally disabled.¹ The decision of D.D.S. to the contrary once again calls into question that agency's competence and/or impartiality.² The Department's decision is reversed.

FOOTNOTES

¹Even if the petitioner could do "sedentary" work, he would still be disabled under the grids. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.17.

²See, e.g., Fair Hearings Nos. 9166, 8619, 7253, 7099, 6929, 6651, and 6583.

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