

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,441
)
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 fifty-two-year-old man with a long history of chronic alcoholism, depression, and back problems. He has nine grades of education but can read and write only on a first or second grade level, which under the regulations (see infra) renders him functionally illiterate. He has worked only sporadically, primarily as a house painter.

Based on orthopedic findings that the petitioner has "post traumatic leg length discrepancy, pelvic tilt and secondary degenerative Arthritis of the L-S joint", DDS determined that the petitioner could not return to his former work and would be limited to "light" or "sedentary" work.

The medical evidence also shows, however, a history of repeated treatment and hospitalizations for acute alcoholism and severe depression. The petitioner recently completed a residential alcohol treatment program and is involved in

regular psychiatric counseling as well as vocational rehabilitation.

In a report dated May 19, 1992, the petitioner's treating psychiatrist described the petitioner's condition as "major depression with very poor concentration and difficulty organizing his activities". She estimated that the petitioner would be precluded from performing any work for "1 year +". In a report dated January 6, 1992, the petitioner's vocational rehabilitation counselor briefly described the petitioner's troubled history and medical problems and stated his opinion that the petitioner "will need a long period of time to reach a point where he can re-enter the world of work in a productive manner". The above opinions are wholly consistent with and uncontroverted by the considerable medical record of the petitioner's evaluations and treatment history.

Based on the medical and vocational evidence it is found that the petitioner has been unable to perform any substantial gainful activity for at least the requisite twelve month period.

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 evidence that the petitioner meets the above definition is truly overwhelming. Not only does DDS continue to flout the law in its disregard for the uncontroverted medical opinion of treating sources,¹ but in this case it blatantly misapplied the "grid" and other regulations that dictate that the petitioner be found disabled on a physical basis alone! 20 C.F.R. §§ 404, Subpart P, Appendix II, Rule 202.09 and 416.964(b).

It is again becoming increasingly frustrating for the hearing officers and the Board to continually point out the lack of competence and/or impartiality by DDS in reaching decisions like this one.² By now, one would have hoped that the commissioner (and her attorneys) would be alarmed (and professionally embarrassed) about the continuation of such patent abuses. Their failure to implement meaningful reform after all these years severely undermines and discredits the Department's claimed commitment to due process and basic fairness for its clients.

FOOTNOTES

¹See Schisler v. Bowen, 851 F2d 43 (2nd Cir. 1988) and Fair Hearing No. 6651.

²See, e.g., Fair Hearing Nos. 11,295, 9166, 8619, 7253, 7099, 6929, 6651, and 6583.

#