

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,581
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare (DSW) to deny him Medicaid benefits. The issue is whether the petitioner is disabled as that term is defined in the regulations.

FINDINGS OF FACT

1. The petitioner is a thirty-nine-year-old man who attended twelfth grade but did not graduate. He later obtained a General Education Diploma (G.E.D.). He can read and write but has trouble reading cursive writing. He has worked as a farm-hand, a logger, and a construction worker. All of these positions required walking or standing eight hours per day and lifting of objects weighing fifty pounds or more. From May of 1986 through June of 1988, he owned and operated his own taxi company, where he also worked as a driver. He frequently had to lift heavy objects in and out of cars in this occupation. His last job was as a truck driver, which he quit in September of 1989, because the prolonged sitting with no opportunity to change positions, caused his knees to ache. The Department has agreed that the petitioner can no longer perform any of his former jobs due to medical

restrictions.

2. The petitioner has some disc disease in his back which causes him constant mild pain and stiffness and limits his ability to lift heavy objects. The pain, according to his treating physician, does not affect his mental state or decrease his ability to concentrate.

3. The petitioner also has some degenerative joint disease in both of his knees which causes him significant pain and swelling. He has had seven operations (two in the last two years) on his left knee which is unstable and buckles easily, and two operations on his right knee. He wears braces on both knees to help stabilize them. He cannot stand for any length of time or walk for long distances or on uneven surfaces. He also cannot lift all but the lightest weights while standing and must change positions when sitting every two hours or so. This knee pain is clearly his major medical problem. He takes medication for pain with only limited relief. He sometimes awakes in the night with knee pain.

4. The petitioner has some mild degenerative joint disease in his left elbow and wrists and has had two operations on his right hand to relieve carpal tunnel syndrome. His elbow condition causes him pain on extremes of arm extension and his wrists can get sore and painful after a time from repeatedly pushing or pulling or rotating objects especially with his left hand. His right hand has some occasional numbness, several times per month. In spite of his

arm and wrist problems, he was able to drive a taxi and keep records for his business for several years and can still drive a car with an automatic transmission. As significant functional limitations claimed by the petitioner based on his wrist and elbow problems are inconsistent with his activities and were not confirmed by the petitioner's physicians¹ they are not credited as factual herein.

5. The petitioner's impairments are expected to last at least twelve months. His pain, according to one of his doctors, does interfere with his concentration but there is no evidence that this interference is significant enough to impact on his ability to perform work functions. The petitioner himself stated that he can concentrate well on television programs and other activities.

ORDER

The decision of the Department is affirmed.

¹The physician who treats the petitioner for his knee, wrist and elbow complaints stated in a letter on June 30, 1992:

"Currently he is able to sit for extended periods, but he is not able to tolerate long periods of standing and walking. He can probably lift on the order of 10-20 lbs., but would have to be very careful about carrying items of even that weight, especially if the walking surface is not entirely even. His use of his upper extremities is not impaired at all."

An updated report filed on January 11, 1993, was consistent with the above opinion.

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.

The petitioner has medical problems which both parties agree would prevent him from doing his former work. However, it must be concluded on the above evidence that the petitioner has the residual functional capacity to perform at least sedentary work:

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 can lift light articles, sit for prolonged periods, as long as he has an opportunity to change positions, and can walk or stand occasionally. He can use his hands for a wide range of activities and has no significant non-

exertional impairments which would further restrict his ability to function. As a younger individual who can perform sedentary work, the petitioner must be found not disabled under the Medical-Vocational Guidelines. 20 C.F.R. § 404, Subpart P, Appendix 2, Rules 201.23-29.

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