

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,739  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her 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-two-year-old woman with a high school education. She has worked as a cashier and in a doughnut bakery. She applied for Medicaid in October, 1992, was denied, and requested a fair hearing in January, 1993. At the request of her attorneys at that time the hearing was continued several times to allow them to obtain and submit additional evidence in the petitioner's behalf. In March, 1994, the petitioner's attorneys withdrew their representation. After attempts by the hearing officer to solicit additional information from the petitioner's treating physicians (see infra) the hearing was finally held on June 29, 1994.

The case concerns only a limited period of disputed eligibility. Following her October, 1992, application for Medicaid based on disability the petitioner became pregnant

and was found eligible for Medicaid as of December, 1992, as an "ANFC-related" mother of an unborn child. Thus, this case concerns only the months of October and November, 1992. The petitioner must show, however, that she was disabled for a continuous twelve-month period (see infra) that included one or both of those two months.

The medical records establish that the petitioner suffers from chronic asthma and has a history of alcohol and drug abuse. The only response received to the hearing officer's solicitations from the petitioner's treating physicians, however, was a single statement that the petitioner has been impaired by her asthma for unspecified "3-month stretches with good function in between".

The case records and the petitioner's testimony show that the petitioner worked steadily up until December, 1991, and that she began a semester of a full load of college courses in August or September, 1992. In October, 1992, her asthma became worse because, according to the petitioner, to get to her classes she had to walk up a steep hill. At this same time the petitioner also began experiencing pain in her lower back. Treatment at that time for both these conditions is confirmed in the medical records. The records also show that in December, 1992, the petitioner was hospitalized following an overdose of one of her prescription medications.

Despite the above problems, however, the petitioner received full credit for two of the classes she had begun that semester. In March, 1993, while she was pregnant, she began working again as a cashier at a large discount store.

Other than her testimony that she was unemployed and drinking a lot during the spring and summer of 1992, the medical records do not indicate that the petitioner was suffering from any disabling impairment, or combination of impairments, at that time. On her October, 1992, application the petitioner did not allege an onset of disability prior to the date of application. From the medical evidence and the petitioner's testimony it is found that the petitioner was not disabled when she began the full-time load of college courses in fall, 1992.

Assuming that the petitioner became disabled, however, as of October, 1992, when she received treatment for her asthma, as well as for back pain and a drug overdose, there is no evidence that any of these problems remained severe by March, 1993, when the petitioner started working again. Therefore, it cannot be concluded that the petitioner was under a disability for any consecutive twelve-month period that encompassed October and November, 1992.

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.

In this case, although the petitioner experienced severe medical problems in the fall of 1992, neither the medical evidence nor the petitioner's testimony establishes that there existed any continuous twelve-month period of disability within the meaning of the above definition that encompassed the months of October and November, 1992, the months at issue herein. Therefore, the Department's decision is affirmed.

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