

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,748
)
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-three-year-old high school graduate who has worked for several years in fast food restaurants. In August, 1992, the petitioner was hospitalized for a dislocated shoulder. The injury occurred while the petitioner was sleeping. Although he was left with some residual limitations from the injury, he was able to return to work within a few weeks. Presently, the petitioner is working an average of 27.5 hours a week, and earns in excess of \$500.00 per month. Moreover, the petitioner admits that he could work more hours, as long as the job was not too strenuous.

The petitioner has been diagnosed as having a sleep disorder that causes him to have nightmares and to thrash around while he is sleeping. This is what caused his shoulder injury. He has been referred to a special clinic for evaluation and treatment, but he cannot afford it without

insurance.

Unfortunately, however, the petitioner did not understand the degree to which Medicaid is a disability-based program. At the hearing, after this was explained, the petitioner admitted that he did not meet the definition of total disability (see infra.). He does not dispute that he is presently engaging in "substantial gainful activity" as that term is defined in the regulations.¹

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 determining whether an individual meets the above definition, the regulations call for a "sequential evaluation" process.² The first step in this process is to determine

¹See 20 C.F.R. § 416.972.

²20 C.F.R. § 416.920.

whether the individual is working. If so, and if such work constitutes "substantial gainful activity", it must be concluded that the individual is not disabled.³

In light of the fact that the petitioner in this matter is presently engaging in substantial gainful activity, and inasmuch as the board is bound by law to uphold decisions that are in accord with applicable law⁴, the Department's decision must be affirmed.⁵

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³Id. § 416.920(b).

⁴3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

⁵At the hearing the petitioner was advised to apply for vocational rehabilitation services, and was informed of his right to appeal any adverse decision from that agency.