

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 11,751  
 )  
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 forty-one-year-old man with a high school education. His primary occupation was a house painter. Since 1980, he has suffered from Keinbock's Disease, a chronic inflammation of the carpal bones in his right wrist.

The petitioner has not worked for the last two years. His condition has become more painful in the past year. In September, 1992, he sought the services of an orthopedic specialist who recommended a surgical fusion to relieve his "persistent discomfort". Financial difficulties have prevented the petitioner from being able to schedule this surgery.

In a letter dated December 11, 1992, the petitioner's family physician wrote:

This is a letter with regards to the case of [petitioner] (DOB 6/24/51).

He continues to suffer from severe hand and wrist pain as a result of the severe surgical

problem from which he suffers.

Aside from the fact that [petitioner] cannot work as a painter, his usual profession, he remains in severe and constant pain and will remain disabled until such time as he has his operation.

In a follow-up letter dated January 25, 1993, the same physician noted:

I have known [petitioner] since I began treating him in August of 1991. I also know his father. [Petitioner] suffers from chronic problems with some of the carpal bones. The patient received surgery many years ago. I have actually taken a look at some of the x-rays. He apparently has a non-union of some of the bones in his wrist. As a result he suffers from chronic pain. Without the surgery this chronic pain will probably be unremitting. Since the patient works as a painter, I seriously doubt that he will be able to resume this activity until such time as he has surgery on his wrist. To this end I have had him see several surgeons including Dr. [orthopedist] in Rutland and they all agree that he needs surgery.

Since he is in chronic pain I have been keeping him on Percoset. Any job that [petitioner] could do that would require him to use his right wrist would cause him a great deal of pain. He has attempted, on several occasions, to work, but I don't think that this is something he should do until such time as he has surgery.

At the hearing in this matter, held on February 11, 1993, the petitioner testified that the pain in his right wrist is continuous and unremitting. He takes large amounts of prescribed narcotic medication, but this does not afford him any long-term relief. He described his life as being consumed by his pain and discomfort. At its worst, the pain renders him virtually dysfunctional. He is dependent on his family and friends for virtually all his basic living needs. He

seeks Medicaid primarily to enable him to have the surgery that has been recommended in the hope that it will provide him with some relief from his condition and enable him to return to work.

The petitioner's testimony was deemed to be highly credible. It is also consistent with the reports (supra) from his doctors. Based on the medical evidence and the petitioner's credible testimony and demeanor, it is found that for at least the last year the petitioner has been unable to perform any substantial work activity. The combination of his pain and the amount of medication he must take to attempt to control it renders him unable to maintain the basic attention and concentration that would be inherent in any competitive gainful employment.

ORDER

The Department's decision is reversed.

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.

As found above, the petitioner's ongoing severe pain and discomfort renders him disabled from any and all work activity within the meaning of the above regulation. Therefore, the Department's decision is reversed.

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