

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,864
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare finding that he is not eligible for 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 forty-two-year-old man with a tenth grade education. He last worked in 1986 as a sandblaster in a granite shed. Prior to that job he had been seasonally employed in the construction trades. The petitioner's former employment required constant standing or frequent bending and carrying of weights in excess of fifty pounds.

2. The petitioner has a number of medical problems, including knee and back pain, obesity and depression. His back pain may be caused by a minimally herniated lumbar disc which causes him a slight decrease in range of motion. He has had several operations on his left knee and may have arthritis, although X-rays have not revealed any particular problem. He does have a slightly atrophied left leg and walks with a limp. The petitioner is 5 feet 7 inches tall, and at

the time of his application, weighed 246 pounds, a significant increase over former years, although at the time of his hearing he was down to 225 pounds. His physicians believe that his obesity contributes to both his knee and back pain.

3. The petitioner's physical problems have a considerable impact on his ability to function. The general practitioner who treated the petitioner for several years opined in a report submitted in September of 1990 that the petitioner was prohibited from heavy labor and heavy use of his knee, but could do some kind of "light to medium work." A consulting physician who examined the petitioner in February of 1992, reported that the petitioner's pain was variable and that on a "good day he could probably work as long as he did not have to do any lifting, stair climbing, walking up hills, and did not have either prolonged sitting or standing without the opportunity to change position." In October of 1992, the petitioner attended a pain clinic where he received epidural steroid injections for what was described as dull constant back pain and chronic left knee pain which was exacerbated by weight and poor muscle strength. In a June 1993 report, submitted by the petitioner's treating orthopaedist, he was described as having "significant limitations on his activity levels." Based on those reports, and the credible and consistent testimony of the petitioner, it is found that he can stand for no more than between fifteen to forty-five minutes without pain, numbness and swelling in his left leg;

cannot engage in prolonged sitting without causing pain in his knee; is unable to do lifting of any objects weighing over ten to twenty pounds; and is unable to climb stairs or walk on uneven ground.¹

4. The petitioner takes Ibuprofen with incomplete relief and has been warned by his doctor against his tendency to over medicate himself. (He became addicted to Percodan and Codeine in the past.) Nerve blocks and steroidal injections have offered the petitioner only very short term relief of a few hours at a time. Physical therapy has been recommended but the petitioner cannot afford that treatment now. Weight loss and exercise have been prescribed to alleviate some of the pain and swelling. The petitioner has lost some weight but not enough to have an impact.

5. The petitioner has been diagnosed as suffering from major depression. A psychiatrist who consulted for the Department reported in August of 1993, that the petitioner had suicidal thoughts and exhibited diminished energy levels and ability to concentrate due to depression. His tests showed that the petitioner's intellectual functioning was low, but in the normal range, with particular deficits in mathematical and cognitive functioning. He concluded as follows:

At this point, on the basis of depression, it appears

¹The petitioner also alleges disability due to chest pains but the record shows that condition has been well-treated with nitroglycerin and has not been assessed by any health care professional as causing any kind of limitation for him.

that the patient is able to sustain no more than a fairly minimal self-care routine. His functioning in the household is impaired, though minimally adequate, and his functioning outside of the household, while still sustained to a moderate degree, sounds to be clearly diminished from its pre-morbid level. It is not clear that the patient at this time would be capable of sustaining sufficient attention were he physically capable of acquiring employment. It is not clear, given his impairment in attention, concentration, follow-through and motivation, that the patient could carry out simple instructions in a reasonable period of time. I do not believe that the patient's condition would necessarily impede his ability to relate to supervisors and coworkers in a work setting.

. . .

The patient has never undertaken anything resembling adequate treatment for his depression. There is some likelihood that with such treatment, his condition could improve to a significant degree. Without treatment, the likelihood of change within the next year is extremely small.

As this evidence is uncontradicted in the record, the assessment of the petitioner's psychiatric functional limitations is adopted as fact.

6. The petitioner lives alone in a trailer and does little all day other than brief stints of housework. His dirty dishes and laundry tend to pile up because he cannot do them. He walks a short distance to his mailbox (500 feet each way) every day but otherwise moves very little. Drives in his truck are short ones (usually to get groceries or visit his mother nearby), due to his lack of funds and the physical discomfort of sitting for more than a few minutes. His days are spent watching TV or listening to the radio with frequent visits from his children. After consulting with the

psychiatrist, he has become interested in counseling treatment and has been put on a waiting list for reduced fee treatments, although he has no money to make any payments.

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 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 Department has agreed in its decision that the petitioner is unable to return to any of his former occupations due to his physical complaints. However, it was determined that he still has the residual functional capacity to do light work. Even should that analysis be true² for his physical abilities, it fails to take into consideration the petitioner's significant mental limitations as reported by the psychiatrist hired by the Department to evaluate the

²The facts show that the petitioner is probably, at best, capable physically of only sedentary labor since he cannot do a good deal of walking or standing or sitting which are necessary components of light work. See 20 C.F.R. Sec. 416.967(b).

petitioner.

The regulations provide that persons are disabled who meet or equal the listings for certain medical conditions, including affective disorders. 20 C.F.R. § 416.926. That listing provides for automatic disability for persons with the following:

Affective disorders:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements of both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions or paranoid thinking;

. . .

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

20 C.F.R. § 404, Subpart P, Appendix 1

The evidence shows that the petitioner has major depression characterized by a change in weight, decreased energy, difficulty concentrating or thinking, and thoughts of suicide which have resulted in a marked restriction of activities of daily living and deficiencies of concentration resulting in frequent failure to complete tasks in a timely manner. As such, the petitioner must be determined to meet the listings for affective disorders above and is thus disabled based on his mental impairment alone. 20 C.F.R. § 416.920(d). Even if this were not so, the combination of the petitioner's mental impairments and his physical impairments give him a level of severe functional limitation at least

equal to that found in the listings above. 20 C.F.R. § 416.926.

The evidence shows that the petitioner's problems will continue for at least a year, if untreated. If treated, the petitioner has some likelihood of significant improvement. However, the petitioner is not able to get treatment because he has no money. His condition will continue and will meet the duration requirement as things now stand. The petitioner should be aware, however, that as a Medicaid recipient, he will be expected to follow prescribed treatment unless he has "good cause" not to and that his continued eligibility for Medicaid will depend on his cooperation with treatment expected to restore his ability to work. 20 C.F.R. § 416.930.

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