

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 11,939
)
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-three-year-old man with a tenth grade education. He is a mechanic by trade, but he has not worked in several years.

The petitioner's primary health problem over the past several years has been inguinal hernias. As these became progressively worse they have prevented him from performing strenuous activities. It appears from the evidence that they became so bad in early 1993 that the petitioner was precluded from virtually all work activity. The petitioner underwent surgical repair of the hernias in June of this year. As of the date of the hearing in this matter, July 22, 1993, the petitioner admitted that he felt much better.

The medical evidence in the case is scant but it does not begin to establish that the petitioner was ever

precluded from all work activity, especially sedentary work, for a consecutive twelve month period.

Prior to obtaining his surgery the petitioner applied for general assistance to pay his surgeon. He was advised of his separate right to appeal any adverse decision under that program.

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 the medical evidence indicates that until early 1993 the petitioner was at least able to engage in sedentary work, and that within a few weeks or months after his surgery he will regain at least that much residual functional capacity. Therefore, considering the petitioner's age, education, and work experience, under the regulations it

cannot be concluded that he has been precluded from all work for the requisite twelve month period. See 20 C.F.R. § 404, Subpart P, Appendix II, Rules No. 201.24 et seq. The Department's decision is affirmed.

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