

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,045

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Appeal of)

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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 fifty-four-year-old woman with a high school education. She has worked primarily as a housekeeper in hotels and as a store clerk. All her past jobs included lifting heavy objects and being on her feet a substantial amount of time.

The petitioner has a plethora of medical problems, including migraine headaches and chest pains. She has received medical treatment for these and other problems on several occasions, and was recently hospitalized on May 9 -12, 1993, for chest pains. As yet, however, these problems remain undiagnosed. A full neurological workup has been recommended, but the petitioner has not done this due to financial constraints.

The petitioner also suffers from back, leg, and neck pains. A recent (April, 1993) consultative examination revealed early degenerative changes in her lumbar spine and osteoarthritis in her hip area. The consultative physician noted that the petitioner experienced this pain "after being up and around and on her feet or doing any activity such as walking the 4-5 blocks to downtown. . ." Although the consultative physician opined that her "most prominent diagnosis is probable depression" and recommended a psychiatric assessment of the petitioner, his report indicates that he credited the petitioner's physical complaints.

In February and March, 1993, the petitioner's treating physician indicated on a general assistance form that the petitioner was unable to work. However, until February, 1993, the petitioner received unemployment compensation, certifying that she was available for and able to work. The petitioner

maintains, however, that she limited her work search to non-exertional jobs. Her application for medicaid was filed in February, after her unemployment benefits ran out.⁽¹⁾

Based on the limited, but uncontroverted, medical evidence (supra), the petitioner had established a prima facie showing that as of February, 1993, she has been unable to perform anything but sedentary work, and that her conditions are more or less permanent. Under the regulations (see infra) that is sufficient to qualify her for medicaid. Although given an opportunity to do so, the Department did not pursue any further evidence in the matter.

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.

In this matter uncontroverted medical evidence establishes that at least as of February, 1993, and continuing indefinitely, the petitioner has been unable to perform physical activity that requires her to stand or walk for prolonged periods. This would limit her to "sedentary work" as defined by the regulations. 20 C.F.R. § 416.967. Under the "grid" regulations, considering the petitioner's age, education, and work experience, this dictates a finding that she is disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule No. 201.12. Therefore, the Department's decision is reversed.

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1. In May and June, 1993, the petitioner belatedly received an extension of unemployment benefits that appears to have been unrelated to her ability to work at that time.