

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,065

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Appeal of)

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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

1. The petitioner is a thirty-four-year-old man who has a limited education. Although he has a high school diploma, he was enrolled in special education courses and neither reads nor writes to any meaningful degree. He has worked for twelve years on a full-time basis as a cemetery caretaker. In return for his labor, he receives room and board (meals and laundry) in the home of the cemetery association president in addition to \$25 per week. He also performs farm chores for his employer during the winter months.
2. In June of 1992, the petitioner suffered a mild heart attack and was hospitalized for a week. He was not able to return to work until mid-September. At that time, he resumed some of his activities on a part-time basis, such as lawn mowing and grounds care but was not able to engage in the heavy lifting required for grave-digging, one of his former duties. Over the winter, the petitioner worked full-time in his employer's barns, cleaning and feeding the cows. By springtime, the petitioner was back working full-time at the cemetery (seven hours per day, seven days per week). He is on his feet all day and primarily mows the lawn, using both a riding and push lawn mower. He has not returned to digging graves, although he thinks he can, because the cemetery association will not let him do heavy work. This past winter he continued to work full-time on the farm doing whatever chores he was asked each day. Most recently, as the farm sold its milking cows, he has performed such chores as feeding the remaining animals, painting and cutting wood.
3. The medical evidence shows that the petitioner had significantly diseased coronary arteries at the time of his heart attack. It was noted at the time that he was overweight and a heavy smoker and caffeine user. He underwent an angioplasty procedure in September of 1992

and thereafter had no further chest pains or other symptoms. He did not need to undergo cardiac rehabilitation because he was found to have reasonable exercise tolerance. He was restricted from engaging in heavy labor for "at least two months" after his attack. He is currently unable to frequently lift more than 25 pounds or more than 50 pounds on an occasional basis. He also must avoid working for long periods of time in extreme cold temperatures. He was advised by his doctors to moderate, if not eliminate his use of tobacco and caffeine and to modify his diet. He has made some attempts to do so. He continues to take medication to minimize the risk for a future heart attack. That medication is currently paid for by the Department through the General Assistance program.

4. The medical evidence also shows that the petitioner has borderline intellectual functioning with a full scale IQ of 76, a verbal IQ of 71 (borderline) and a performance IQ of 84 (low normal). He has developmental disorders in reading, expressive language and math, as well as attention deficit disorder. However, he is able to follow simple verbal instructions, communicate with others and do rudimentary math problems. It appears that he requires a good deal of direction in his work but once directed, can follow through.

5. There was no evidence presented that the petitioner is not performing up to expected standards regarding his current employment or that he is not actually earning his compensation.⁽¹⁾ On the contrary, it appears that the petitioner is actually working the hours stated and accomplishing the tasks set for him.

ORDER

The decision of the Department 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.

While the medical evidence clearly shows that the petitioner is unable to do his former work because it required heavy lifting, the vocational evidence shows equally clearly that the petitioner is currently employed full-time doing lighter work for the same employer. That work involves significant and productive physical activities which are financially compensated. There is no evidence that the petitioner has not satisfactorily performed that work or that he has not actually earned his pay. Therefore, it must be concluded that the petitioner's current employment is both substantial and gainful. 20 C.F.R. §

404.1572. The regulations governing Medicaid provide that a person who is doing substantial gainful activity is "not disabled regardless of your medical condition or your age, education, and work experience." 20 C.F.R. § 404.1520 (a) and (b). Therefore, the petitioner cannot be found to be under a disability under the above Medicaid definitions.

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1. No evidence was presented by the petitioner as to the value of his in-kind compensation. Therefore, this decision assumes that the value of the petitioner's hourly compensation is equal to the minimum wage.