

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,096

)

Appeal of )

)

)

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-two-year-old woman with a tenth grade education and no recent work history. She alleges disability based on chronic pain in her neck and lower back. She also suffers from chronic headaches and numbness in her hands.

Due largely to financial considerations, the petitioner's medical treatment has consisted mostly of sporadic visits to a chiropractor. Her family doctor, whom she has not seen in some time, submitted a brief note in the petitioner's behalf dated March 8, 1993, stating:

Disability osteoarthritis spinal. Limitation of motion and pain on bending or lifting. In my opinion this physical condition impairs her ability to work.

In January, 1993, the petitioner underwent a consultative examination by an internist. His report included the following "impression" of the petitioner:

1. Poly-arthralgias, etiology unknown. Further workup would be indicated including blood work and possibly x-rays.
2. Possible right carpal tunnel syndrome and an EMG would be helpful in elucidating that.
3. Rather severe limitation of motion of her neck.

4. Rales in her lungs with trace peripheral edema suggesting possibly mild congestive heart failure.
5. Clubbing of her fingers with a heavy cigarette smoking history.
6. History of dyspepsia.
7. History of surgeries including cholecystectomy, tubal ligation, and herniorrhaphy.
8. Limited range of motion of her back only allowing her to bend over the mid shin level.

In March, 1993, the petitioner underwent a consultative orthopedic exam. This doctor also noted the petitioner's limited range of motion and pain in her back. His report concluded with the following assessment:

1. Neck and shoulder pain, possibly radicular from DJD in the neck.
2. Lower back pain with sciatic type distribution possibly radicular.
3. Probable DJD right knee and ankles.
4. Abdominal pain, possibly related to failed hernia repairs.

X-rays taken subsequent to the above exam, however, were essentially negative.

At the hearing, held on July 22, 1993,<sup>(1)</sup> the petitioner testified that her back and neck pain is aggravated by lifting and prolonged standing or walking, all of which she is unable to tolerate. She lives with her two daughters (ages 24 and 17) who do the more strenuous household chores. The petitioner appeared to be in considerable physical discomfort at the hearing and her testimony and demeanor were deemed credible.

Despite the lack of clinical findings, the petitioner's testimony regarding her pain and limitations was essentially supported by the observations and examination findings (supra) of all the examining physicians. Her problems also appear to be longstanding and chronic. Therefore, it is found that the petitioner is precluded from performing jobs that would require her to be on her feet all day and that would entail repetitive even light lifting. This would rule out all but sedentary work.

#### 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 case the petitioner's credible testimony, as supported by a preponderance of the medical evidence, establishes that the petitioner is at least precluded from being on her feet all day and from engaging in repetitive lifting. This would preclude all but sedentary work as defined by the regulations. 20 C.F.R. § 416.967. According to the Medical-Vocational Guidelines, based on the petitioner's age and work experience, this dictates a finding of disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule No. 201.09. Therefore, the Department's decision is reversed.

# # #

1. Following the hearing, both parties tried without success to have the consultative physicians elaborate on their reports. Unfortunately, this contributed to a delay of several months.