

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,107

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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 forty-six-year-old woman with a high school education. She did some secretarial work in the late 1970s, and in the late 1980s she owned and operated a convenience store with her husband, from whom she is now divorced.

The petitioner alleges disability based mostly on chronic back pain, but also on numbness in her left hand and arm, and on depression. At the hearing, held on July 2, 1993, the petitioner stated that she has had back pain intermittently for several years, but that it became worse in August, 1992, following a long car ride. She stated that she has "spasms" about once a month which require her to lie down, but that on "good days" she can do light housework. The petitioner stated that she had never sought to have her

problems evaluated by a doctor, and that her treatment consisted solely of rest and taking Ibuprofen.

At that time of the hearing the only medical evidence in the file relating to the petitioner's allegations was a March, 1993, hospital report showing that the petitioner had on that one occasion received emergency room treatment for "acute back pain" and "arm neuropathy." An x-ray of the lumbar spine taken during that visit showed "minimal degenerative joint disease"; and the petitioner was advised for treatment to "continue Ibuprofen".

Because the medical evidence was so sparse, and because the petitioner stated she had never received any other medical attention for her back and arm problems, and that she had never been evaluated or treated for her depression, the Department agreed to continue the matter to obtain separate neurological and psychological assessments of the petitioner on a consultative basis. These were obtained in August, 1993.

The psychological assessment detailed the petitioner's background and reported problems. It concluded that the petitioner "is experiencing a depressive neurosis with significant somaticizing features", and it "strongly recommended that (she) consider participating in psychotherapy." However, there was no indication or opinion that the petitioner's psychological problems would significantly interfere with her ability to work. The petitioner was noted to be of average intelligence, good appearance, and able to interact appropriately throughout the interview.

The consultative neurologist's report concluded with the following "assessment and plan":

PROBLEM NO. 1: Left ulnar neuritis.

I believe she has a left ulnar neuritis. I am recommending this patient pad the area, and I have told her that she should seek medical follow-up for this because I believe she needs nerve conduction studies and EMG of the left ulnar nerve. This may be merely irritative but it may also be that the nerve has been damaged and, if so, she would become weak in her hand. She has been told this.

PROBLEM NO. 2: Chronic left carpal tunnel syndrome

The mild atrophy in her left inner eminence and the positive Phalen's maneuver, along with her history of trouble with her entire arm, make me think she has longstanding left carpal tunnel syndrome. Again I think this needs to be medically evaluated, and she should have nerve conduction studies and EMG. Again, she has been told the consequences of not getting this evaluated. It could include weakness of her hand which might be permanent.

PROBLEM NO 3: Chronic low back pain.

She is not a surgical candidate at the present time because she has no objective deficit, and her problem waxes and wanes. Clearly, I think she could be employed, but she should not be doing anything that involves repetitive bending, lifting or twisting. I have told the patient that I think she should engage in vigorous weight loss, and if she can lose 20 or more lbs, I think that will be helpful for her. I also think she should be sent for her first physical therapy evaluation and to be taught then some back-strengthening exercises, which would be either swimming in a heated pool or as a second choice walking. She certainly should not be sent for running. Beyond this, some pain medication intermittently might help her or the judicious use of a nonsteroidal anti-inflammatory drug, such as Motrin and possibly a very low dose of a heterocycle agent, which is amitriptyline at bedtime, realizing that of course can make one gain weight, and I would like her to lose weight.

PROBLEM NO. 4: Rule out depression.

This patient may be depressed as well. It is certainly reasonable to consider putting her on an antidepressant at night to help her sleep and to help her with her pain. However, the traditional ones often make people gain weight. A low dose of a heterocyclic agent at night, such as amitriptyline in

combination with perhaps some Zoloft or Paxil in the morning, exercising all due caution so that she does not get toxic on a heterocyclic agent, might allow her to lose weight and could improve sleep as well and give her a sense of more energy in the daytime.

Following the submission of the above reports the hearing officer again met with the petitioner and Department's counsel. At that time the petitioner reported that she had lost some weight and was feeling better. She stated, however, that in light of her financial situation she was disinclined to follow up on any of the other medical suggestions in the above reports. The hearing officer advised her of her potential eligibility for community mental health services and vocational rehabilitation, the latter of which might pay for medical evaluation and treatment to enable her to return to work. The petitioner

responded that she would go if somebody directed her to, but that she was not motivated to seek such help on her own.

Based on the medical evidence and the petitioner's demeanor, it is found that the petitioner is not precluded from performing at least sedentary work, especially if she would follow through on the suggestions of the above medical consultants. It is difficult in a case such as this, however, especially in the absence of expert opinion, to determine whether, and to what extent, the petitioner's resistance to seeking medical and vocational services is the result of an underlying medical condition or simply a situational lack of motivation. The petitioner was a pleasant and cooperative individual, and seemed to be forthright and candid. Therefore, it is not without reservation that the hearing officer concludes that her problems, at least as they affect her ability to work, appear to be as much motivational as they are medical.

In assessing the available evidence, there is no suggestion in the medical reports, and the hearing officer was not convinced by the petitioner's demeanor, that the petitioner is unable at this time to follow through with the various suggestions that have been made to her regarding treatment and vocational rehabilitation--both of which could enhance her ability to find and keep a job, and neither of which would necessarily depend on her financial status. Therefore, it cannot be found that the petitioner has been precluded, for medical reasons alone, from performing all work activity for any consecutive twelve-month period.

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 petitioner is a younger individual with adequate education and a significant (though, not recent) work history. It is clear from the medical evidence that her physical problems are amenable to treatment and do not render her unable to perform all work activity. Her psychological condition is more problematic; but, as noted above, the medical evidence, as well as the petitioner's demeanor, does not provide a persuasive basis to conclude that these problems prevent her from working. The petitioner is again advised to apply for services at her local community mental health agency and with the vocational rehabilitation office in her district. At this time, however, based on the evidence available, the Department's decision is affirmed.

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