

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,183

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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 thirty-seven-year-old woman with a high school education. She has worked primarily as a nurses aide. The petitioner worked until April, 1992, when she injured her back and underwent a period of physical rehabilitation. The intervention of other medical problems, however, most significantly polycystic kidney disease and migraine headaches, has prevented the petitioner from returning to work since that time.

The medical evidence shows, as indicated above, that following her injury at work in April, 1992, the petitioner underwent several months of extensive rehabilitation therapy to reduce her back pain. In December, 1992, she was certified to return to work. However, in April, 1993, she began to be bothered more and more by her previously-diagnosed polycystic liver disease and migraine headaches.

On May 7, 1993, her family doctor wrote out a "disability certificate" stating that she was "not to work until further notice".

The medical records indicate that the petitioner has continued under medical treatment for her various problems. Unfortunately, neither her liver disease nor her migraine condition is amenable to medical therapy; and her treatment for these problems has focused on attempting to control the symptoms, primarily pain.<sup>(1)</sup> A September, 1993 report indicates that she required Percocet at least once a week in addition to her other pain medications.

The petitioner's back problems have also become worse. Medical reports dated last winter indicate that

her primary problem is her liver disease but that she still suffers from the "same pattern" of back pain as existed after her accident.

Unfortunately (and inexplicably) neither the petitioner, the Department, nor the hearing officer was successful in obtaining a report from the physician who is monitoring her liver disease. At her hearing, however, held on June 16, 1994, the petitioner testified that her various medical problems keep her in near-constant pain that limits her physical activities and impedes her concentration and ability to engage in any significant household or social activities. She continues to take prescription medication, including Percocet, which further limits her ability to concentrate. She testified that she ordinarily has to take two one-hour naps during the day. The petitioner's affect at the hearing was flat but appropriate, and her testimony and demeanor struck the hearing officer as credible.

Based on the petitioner's testimony and the medical evidence, none of which contradicts any of her allegations, it is found that since May, 1993, the petitioner has been totally disabled by the severe pain and limitations imposed by her various medical conditions. The evidence clearly shows that the petitioner made a sincere attempt to rehabilitate herself for working. The picture that emerges, however, is that she was eventually worn down by her chronic medical problems.

### 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 medical evidence supports the petitioner's credible allegations that since May, 1993, her severe pain has prevented her from engaging in any substantial gainful activity. Thus, the above definition is met, and the Department's decision is reversed.

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1. The medical record includes a consultative psychological evaluation of the petitioner done in December, 1992. While essentially negative for significant psychological problems, the report appears to fully credit the petitioner's complaints of physical pain. It also notes that the petitioner was once the victim of a sexual assault, and that "migraines are commonly found" in individuals who have been victimized in this manner.