

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,382

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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

The petitioner is a twenty-three-year-old single man who for several years operated his own towing and wrecking business. The petitioner is originally from Wisconsin, and moved to Vermont because his married sister lives here. The petitioner did not appear at the hearing (held on November 19, 1993), and most of the background information in the case was provided by his mother, who has spent much time with the petitioner in Vermont since the petitioner's problems, described below, began about a year ago.

The petitioner had always been a hard working individual who was compulsive about his business and his ability to be self-supporting. However, around Christmas time last year his family noticed a sudden change in his personality and demeanor. He became sullen and withdrawn and began drinking heavily. By March, 1993, he was refusing to communicate with his family, and his social life, personal appearance, and business had deteriorated badly.

In May, 1993, the petitioner was hospitalized after shooting himself in the head. Emergency surgery was successful, and physical damage from the wound was fortunately slight. Although his family and doctors considered it a suicide attempt, the petitioner insisted it was an accident and resisted their attempts at psychiatric intervention. A consulting psychiatrist who examined the petitioner while he was in the hospital concluded that the petitioner was not being truthful about the shooting, but that he was "unfortunately fully competent to do that", and that treatment could not be forced upon him.

The petitioner remained in the hospital for eleven days. The discharge summary notes that he was "repeatedly advised to consider counseling and the initiation of antidepressant medication", but that he

"unfortunately... refused further psychiatric evaluation and treatment and left the hospital against medical advice."

Following his hospitalization, the petitioner went back to Wisconsin to live with his family, but a short time later returned to Vermont against his family's wishes. He soon resumed drinking heavily and stopped working almost altogether. When confronted about his problems he would make "innuendoes" about suicide, and was totally resistant to suggestions that he seek medical help for his problems. Mostly, he stayed home all day, drinking and listening to "sad music...over and over".

Based on the petitioner's refusal to cooperate in developing the case record further, DDS denied the application "for insufficient medical evidence". The petitioner remains adamant in his refusal to acknowledge that he is suffering from a mental illness, and has resisted all attempts by his family and treating physician (the surgeon who did his surgery, whom the petitioner still sees for checkups) to seek counseling or medication for this problem.

In a note dated November 16, 1993, the petitioner's treating physician stated:

[Petitioner] sustained a gunshot wound to the right frontal lobe that was suspicious for a self inflicted injury. He has a definite history of suicidal ideation and has been referred to a psychiatrist. I believe at this point that he should be considered totally disabled until evaluated again by psychiatry.

Immediately after the hearing in this matter, the same physician submitted the following:

[Petitioner] is a patient of mine who presented to the Emergency room with a gunshot wound to the right frontal lobe that was most likely self inflicted. On 5-18-93 he underwent right frontal craniectomy for debridement of bone fragments, bullet and devitalized brain. He has done reasonably well from a neurologic standpoint and has no gross neurologic deficits, although one would have to run a full neuro-cognitive profile to know whether or not he has any more subtle deficits.

I do feel, however, that he should be classified as totally disabled because of his depressive disorder. He has so far refuses psychiatric intervention except for an initial consultation in the hospital. According to his mother he has had multiple episodes of suicidal ideation and has been unable to focus on work. This patient would be a good candidate for daily medication as he no doubt has an endogenous depression. I feel that he has a serious depressive disorder as manifested by the suicide attempt and will no doubt require long term evaluation and management with a psychiatrist.

Based on the above uncontroverted opinion by the petitioner's treating physician and the credible anecdotal evidence regarding the petitioner's level of functioning, it is found that since December, 1992, the petitioner has been suffering from severe clinical depression that renders him unable to work, and otherwise function socially, on a regular and sustained basis.

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.

The medical evidence in this matter is admittedly sparse. However, because of the petitioner's obvious lack of insight into his condition, his refusal to cooperate in the diagnosis and treatment of his illness cannot, in fairness, be held against him in determining his eligibility for medicaid. It is, therefore, concluded that the above evidence of the petitioner's depression is sufficient to establish that he meets the above definition of disability. The biggest tragedy of the case to date, however, is that the petitioner does not recognize that his problem can probably be treated effectively, and with prompt results, with proper medication and counseling. Although it is problematic whether eligibility for medicaid will spur the petitioner to seek treatment, his mother indicated that removing his concern about incurring more medical bills that he cannot pay might contribute to his willingness to follow the advise of his doctor and family. The hearing officer and the Board sincerely hope so.

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