

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,483

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Appeal of )

)

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 forty-five-year-old man with a high school education. The petitioner worked as a dairy farmer until 1993, when he developed pain in his muscles and joints, which has been diagnosed as a form of fibromyalgia, and which eventually forced him to stop working.

The medical evidence begins with office notes from the petitioner's treating physician beginning in June, 1993. In a note dated July 8, 1993, the treating physician stated:

[Petitioner] is currently under my care. He is under intensive evaluation and treatment for severe muscular and joint pain and is currently unable to work. I would estimate that his disability will be for at least 3-6 months.

Apparently, however, the treating physician soon reassessed his prognosis. In a report to DDS dated August 2, 1993, he wrote:

[Petitioner] has only recently become my patient and copies of my office records for his visits since February, 1993 will be forthcoming. However, I did also want to address his vocational disability in a brief narrative report.

[Petitioner] presented with a major change in his physical capacity. He has had a main complaint of severe diffuse pain which seems to be fibromyalgia, although he continues to be under investigation for a possible arthritic condition as well. Accompanying this severe pain has been significant sleep

disturbance and depression. He is currently on medication and started to show some improvement. However, he remains completely disabled from his usual vocation which is farming. He is unable to do significant lifting, walking, carrying or activities such as bending due to his severe pain.

This disability is at this time of indeterminate duration, but I do expect it to last approximately one year.

Following a brief period of mild improvement, the petitioner's condition worsened in the fall of 1993. On October 18, 1993, the petitioner's physician wrote the following referral letter to a rheumatologist, summarizing the petitioner's condition:

Thank you for seeing [petitioner]. He is a 44-year old man who has been a long time dairy farmer. This last year he presented with a history of 1-2 months of diffuse aches, pains and weakness. Sleeping was quite disturbed. Exam demonstrated marked tenderness of multiple soft tissue, such as trapezius muscle, distal upper arms, and distal thighs, and the lower lumbar knees and elbows and the lower back bilaterally. His symptoms did not improve with samples of anti-inflammatory therapy, such as Relafen. Lab testing showed a normal sed. rate of 15 and a negative ANA, rheumatoid factor, CPK, and thyroid functions. He was given a trial of a sedating tricyclic antidepressant in the form of Doxepin, which was gradually titrated from a low dose up to 100 mgs. per day, and with that he did seem to have some significant improvement. His sleep pattern improved and his aches, pains, and tenderness improved a good bit, although they did not resolve completely. He just seemed to be able to do more again when he worsened, although he continued to take Doxepin 100 mgs. a day at h.s. and Voltaren 75 mgs. on a b.i.d. p.r.n. basis. Today he again tells me that he is having a great deal of difficulty sleeping and that he hurts all over. He again has considerable tenderness, especially of soft tissues, but also of large joints, such as shoulders, elbows, and knees. I can't appreciate any joint swelling or inflammation today.

I had thought that he has fairly severe fibromyalgia, which did seem to be responding to the use of antidepressant, but with his new worsening, I would like your opinion about what is going on with [petitioner] and what else we can do for him.

In a letter to the Department dated November 18, 1993, the treating physician explained the problem of the above referral and summarized the petitioner's condition as follows:

I am the primary care physician for [petitioner]. I have been informed that he has been denied disability and medical coverage. I am writing to ask that you reconsider. I do strongly feel that [petitioner] is currently experiencing severe fibromyalgia and polyarthralgia, which we are continuing to try to evaluate and treat. I feel that his symptoms are severe enough that he should be considered to be completely, but temporarily disabled, and I would estimate that this disability would be for a period of approximately six months. I am hopeful that by that time, we can have his condition treated sufficiently and that he will be able to go back to work. Unfortunately, because of his loss of medical insurance coverage, he did not follow through with what I thought was an important referral to a Rheumatologic specialist, and I continue to evaluate him further and try other therapy. I would urge you to reconsider once again so that we can proceed as efficiently as possible to get him feeling better and back to work.

The treating physician followed up with a letter to the Department's attorney dated January 20, 1994, in which he wrote:

[Petitioner] remains under my care. I have continued to see him monthly since September 1993. He continues to have severe, diffuse, muscular and skeletal pain which, I believe, limits his function to a

considerable degree. The most likely diagnosis for this pain is fibromyalgia, although I continue to be worried about the possibility of rheumatoid arthritis. He has had trials of several medications including Doxepin, Voltaren and Plaquenil and will now be trying Amitriptyline instead of Doxepin. I have wanted to have him seen by a specialist in rheumatology for some time now, but this was initially not possible because of financial reasons. At this point, he feels that he will be able to secure some medical coverage and we are going to go ahead with rheumatology consultation, as I feel that this is very important. I think it would also benefit him to have regular physical therapy, if coverage for this can be arranged. I think he will need to be seen on a regular basis for at least several more months.

Apparently thinking that the petitioner was about to obtain medical coverage, the treating physician again referred him to a rheumatologist, with the following letter dated January 20, 1994:

[Petitioner] is a 44-year old man who has had a frustrating problem now for the last 6 to 8 months. I first saw him about 6 months ago because of diffuse aching pain without weakness. He has had diffuse tenderness which seemed to involve soft tissues more than joints and I felt that he had fibromyalgia. His pain has been so severe that he has been disabled from his work as a dairy farmer. There has also been a history of sleep disturbance and the lab testing has shown a normal cbc, sed rate and TSH. In fact, the sed rate has been checked twice and has only been 13 and 15. ANA and rheumatoid factor have been less than 20 and less than 10 respectively on 2 checks in the last 6 months and CK has been normal as well.

I tried him on a sedating tricyclic in the form of Doxepin at doses up to 100 mg qhs and at times he seems to do better, but then his symptoms return. I wanted to have him seen by one of you folks a while ago but, because he is disabled from his job, finances have been a real problem for him. At one point, he seemed like his exam was remarkable for more specific joint tenderness, though I never did see much inflammation. Nevertheless, I worried about him having seronegative rheumatoid arthritis and, because he was still so symptomatic, I gave him a trial of Plaquenil, 200 mg b.i.d. which he took for 2 months. After about one month, he did seem to be feeling quite a bit better, but his symptoms have returned lately and have been just as severe so I am stopping the Plaquenil and I have insisted that he have a rheumatology consultation at this point. In the meantime, I am also switching him from Doxepin to Amitriptyline, 50 mg qhs. I have also been talking to him about physical therapy, but once again financial problems enter into the equation. This has not yet been started, but he is supposed to try to get approval for this from the people he is working with at the state dept. of social welfare.

Thank you for your help with [petitioner]. I think he would really like to be back to work and hopefully you will have some ideas about diagnosis or treatment which will allow this.

On a March 3, 1994, form assessment for general assistance, the petitioner's physician expressed frustration that the Department had "impeded" his efforts to have the petitioner seen by a specialist. At that time he estimated that the petitioner's impairment would last six more months, and he provided the following response to the question: "If this individual is unable to work full time at his or her usual occupation, could the patient work full time in any other type of employment?":

Yes. 4 hr./day. No prolonged sitting (@ 1 hr.) or standing. Lifting limit 20 lbs.

In May, 1994, the petitioner finally underwent an examination by an arthritis specialist, but on a consultative basis at the direction and request of DDS in connection with his application for disability benefits. This consultative specialist diagnosed the petitioner's

joint pain as "probable fibromyalgia", with the following discussion:

[Petitioner] has developed a generalized pain syndrome since early 1993. Examination today reveals no evidence of an inflammatory arthropathy. He is equally tender over non-joint areas as joint areas as well as over muscles. He also has very little morning stiffness by history which would go against an inflammatory arthritis.

Although his features are not classic for fibromyalgia in which there is generally muscular involvement without joint involvement, his syndrome probably comes most closely to that as well as a generalized pain syndrome.

It is unclear as to what the etiology of this might be. The patient does not seem to be markedly depressed and at least on interview today, there did not seem to be any major life traumas.

I would recommend that trials with different antidepressants be used to see if he tolerates one better than others and to determine if that would be helpful, to continue on anti-inflammatory medications, although he might utilize a shorter acting NSAID p.r.n. I would also recommend a regular exercise program and possibly physical therapy.

As far as disability, it would probably be difficult for him to perform the heavy type of work he has done in the past under the present circumstances. However, I think that if it were available for him to work in a

less physically strenuous job, such as sedentary or

light work, that he may be able to perform that type of job.

Vocational counseling may be of benefit.

Finally, the record includes the following letter the petitioner's treating physician sent the Department on July 21, 1994:

I am writing once again about my patient, [petitioner] (12/31/48). He remains quite symptomatic from fibromyalgia. This is a frustrating disease process which can be quite disabling as it has been for [petitioner] but, which we are not very good at treating as yet. I am writing however, because, although [petitioner] is having symptoms which disable him from his former employment, he is quite anxious to try employment that he could tolerate. As [consulting specialist] and I have both previously pointed out, he could reasonably do a job that was sedentary or involved light physical work and he would benefit from occupational rehabilitation in this regard.

Also, he and I have yet to receive any determination from the state about payment for one of the treatments that has been shown to be helpful in fibromyalgia and that is physical therapy. Many people with this disease are helped to remain functional by having regular physical therapy treatments and guidance from a physical therapist about appropriate exercises they can do at home.

I am concerned that [petitioner's] continued frustrations in regard to obtaining treatments and appropriate help with his medical bills and appropriate occupational rehabilitation is causing him frustration and depression which typically worsens the fibromyalgia. I would encourage, therefore, that some decisions get made about his case in the very near future to get him back to living as normal a life as possible.

Based on the above reports it is found that the petitioner cannot perform his former work as a dairy farmer. It is further found that since October, 1993, (when his condition worsened), and continuing to the present and into the foreseeable future, his residual functional capacity has been limited to light or sedentary work, four hours a day, with no prolonged sitting or standing more than an hour at a time--i.e., the limits imposed by the petitioner's treating physician in March, 1994 (see supra), and not specifically controverted by any prior or subsequent evaluation. According to the regulations (see infra), in light of the

petitioner's age, education, and work experience, the petitioner should be found to be disabled on this 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.

As noted above, the petitioner in this case is 45, with a high school education and a work history limited to dairy farming. Because of his medical condition, he is limited to sedentary or light work, four hours a day, with limitations on prolonged sitting and standing.

According to the "Medical Vocational Guidelines" contained in the federal regulations, 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.14, an individual who is fifty years old (five years older than the petitioner) with the same education and work experience as the petitioner<sup>(1)</sup>, but who (unlike the petitioner) retains the residual functional capacity for a full range of full time sedentary work, is considered disabled. The regulations specify, however, that in cases in which no specific "grid" rule applies (in this case because the petitioner's residual functional capacity is for less than a full range of sedentary or light work) the rules "still provide guidance for decision making". Id. Sec. 200.00(d).

In this case, common sense and experience dictate that, in terms of availability of jobs, comparing the petitioner to his fifty-year-old counterpart on the "grids", the petitioner's five years of younger age is more than offset by his significantly greater physical limitations. Using the "grids" for comparison purposes, it must be concluded that a forty-five-year-old man physically limited to a half day of working, with additional limitations on prolonged sitting and standing, has fewer jobs available to him than an individual five years older but with no physical limitations on his ability to perform a full range of sedentary work. Inasmuch as the "grids" specify, however, that the above-described fifty-year-old counterpart to the petitioner is considered disabled, the petitioner must also be considered disabled.

In view of the above the Department's decision in this matter is reversed.

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1. The rule in question specifies an education level of "high school graduate or more--does not provide for direct entry into skilled work" and previous work experience as "skilled or semi-skilled--skills not transferable".