

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,545

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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 fifty-three-year-old woman with an eighth grade education. She has difficulty reading and writing, but until 1991 she was steadily employed at various jobs including factory machine work and in-home personal care attendance for elderly individuals. Her most recent job was as a cafeteria worker at a local college. This job ended in May 1991, when the petitioner injured her back emptying garbage into a dumpster.

Her injury was diagnosed as a severe back sprain overlaying some mild spinal nerve root compression. In 1991 and early 1992 she participated in regular physical therapy and sought the help of Vocational Rehabilitation when she was advised that she could not return work that entailed significant lifting and prolonged standing and walking.

Her physical therapists' discharge note, dated April 1, 1992, includes the following "summary/recommendations":

[Petitioner] has been receiving therapy consisting of low back strengthening and functional simulations. The date from the exit assessment indicates that she has a subjective report of (L) low back pain with any and all activity. Functionally and performance wise, the data indicates that she works best at the waist to overhead levels. She can work at a light physical demand characteristic of work (20-24 pounds on an infrequent basis). She can stand for 20 minutes and perform a task simulating the type of assembly

commonly found in industry. Alternating with sitting would allow her to extend this.

It is recommended that [petitioner] be discontinued at this time.

However, the petitioner's treating orthopedist, in an "estimated physical capacities questionnaire" submitted to Vocational Rehabilitation in July, 1992, was even less optimistic regarding the petitioner's limitations. He stated that the petitioner would be limited to lifting of 12 pounds "occasionally" and 4 pounds "frequently". He also noted that the petitioner could not continuously sit, stand, or walk during the day, and that she had reached "maximum medical improvement".

The record also contains the following assessment of the petitioner, dated October 4, 1993, from her counselor at Vocational Rehabilitation:

This letter is in response to your request for information from our files on [petitioner]. [Petitioner] has been a client of our agency since her self-referral in March of 1993. [Petitioner] was found eligible for our program in March of 1993 due to low back pain. She is currently in a plan status and has been actively involved with us in seeking employment opportunities.

As per your request for information on her work capabilities, I am enclosing a copy of an aptitude and educational level assessment (SAGE) conducted with her several months ago. According to this test data, [petitioner] has limited vocational options due to below average aptitude levels and marginal reasoning, math and verbal capacities. I am also enclosing a copy of a physical capacities report that was completed on her over a year ago. I do not believe that her physical status has improved significantly since that report was submitted to us but I would nevertheless suggest that you contact her doctor [Orthopedist] for a more current functional assessment.

Given her low cognitive functioning (SAGE), minimal transferable work skills, and extensive functional restrictions (PCQ), it is my opinion that she is not a good candidate for retraining or competitive employment.

I hope that the above information and comment will be of some help in coming to an eligibility determination. Please contact me if you have any more questions.

Subsequent office notes from the petitioner's orthopedist (the most recent dated April, 1993) do not indicate any significant improvement in the petitioner's condition or any change in the orthopedist's assessment of the petitioner's capabilities.

Based on the above uncontroverted medical and vocational assessments of the petitioner, it is found that the petitioner's maximum residual functional capacity is for work that would allow her to alternately sit and stand, and that would not require her to frequently lift more than 10 pounds. This precludes her from performing any of her past jobs, and from all but "sedentary work" as defined by the

regulations.⁽¹⁾ It is also found that the above limitations are permanent.

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 view of the finding that the petitioner's physical limitations preclude all but sedentary work, and considering the petitioner's age, education, and work experience, the regulations dictate the conclusion that the petitioner is disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule No. 201.09. The Department's decision is, therefore, reversed.

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1. Se 20 C.F.R. § 416.967.