

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,645

)

Appeal of)

)

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 twenty-nine-year-old woman who has worked for the last seven years as a cook at a fast food restaurant. In November, 1993, she was diagnosed as being anemic. Since that time she has been receiving antibody treatment once a month. The petitioner also has a longstanding back problem that limits somewhat her ability to do heavy lifting.

The petitioner is employed 30-38 hours per week. Other than two periods in the last year and a half of hospitalization for pneumonia (one lasting two weeks, the other three weeks) the petitioner has not lost any time at work because of her illness. The petitioner admits that her application for medicaid was based on her unpaid medical bills rather than a claim of being unable to work. At her hearing, held on May 18, 1994, the petitioner was advised that if her condition worsens to the point where she is unable to work, she should reapply for medicaid at that time.

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.

Under the regulations an individual, like the petitioner, who is presently engaging in substantial gainful activity cannot be found disabled. 20 C.F.R. § 416.920(b). Therefore, the Department's decision is affirmed.

#