

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,690

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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 fifty-four-year-old man with an eighth grade education. Until 1993, he worked in a salvage yard dismantling old cars. The petitioner alleges that he worked until pain in his legs, ankles, shoulders, and back became too severe for him to be on his feet and to engage in heavy lifting.

The petitioner lives alone and has no treating physician. The medical evidence in his case consists primarily of the reports of a medical doctor and a psychologist who in January, 1994, examined the petitioner on a consultative basis in connection with his application for medicaid. The report of the petitioner's physical examination noted that the petitioner's ankle pain was associated with prolonged standing. The report concluded with the following:

This patient is a status post left ankle fracture, ORIF, with probably some resultant arthritis there. He still maintains pretty good range of motion in that ankle. The second diagnosis is query thoracic outlet syndrome which seems to be brought on only by posture associated with sleeping. Otherwise it does not seem to bother him too much. His third diagnosis is most likely atherosclerotic cardiovascular disease. He has a murmur. It is asymptomatic but he has poor pulses distally. With his weight and smoking history, I would not be surprised if he had cardiovascular disease at this point. The fourth diagnosis is poor education.

An x-ray of the petitioner's lumbar spine also done in January, 1994, noted "fairly extensive degenerative changes at L4-5 and L5-S1".

The examining psychologist found no significant emotional or interpersonal problems with the petitioner, but did note some significant intellectual limitations. The petitioner's tested IQ was 71

Verbal, 82 Performance, and 76 Full Scale. Also evident were significant deficits in understanding even simple questions, basic verbal and math skills, memory, and visual processing. The psychologist also noted the petitioner's physical complaints and observed that "he moved slowly". His report also states that he did not believe that the petitioner was "exaggerating or malingering any behavioral deficiency".

Based on the above assessments the petitioner's claim that he cannot engage in any prolonged standing without pain appears fully credible. In addition to this physical limitation it must also be found that the petitioner would be substantially limited intellectually in the types of jobs he could perform. This is sufficient under the regulations (*infra*) to conclude that the petitioner is disabled on a seemingly permanent 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 case establishes that the petitioner's physical limitations preclude him from performing any job that would require him to be on his feet most of the time. This rules out the petitioner's past work and all but "sedentary" alternative jobs. See 20 C.F.R. § 416.967. Considering the petitioner's age, limited education, and unskilled work history, the regulations dictate that he be found disabled. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 201.09. ⁽¹⁾ The Department's decision is, therefore, reversed.

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1. It can also be noted that the petitioner is less than a half year of age away from meeting the "grid" definition of disability even if he could be found capable of performing a full range of "light" work (i.e., jobs that entail mostly standing with continual 10-20 pound lifting). See *id.*, Rule 202.01. In addition, the petitioner's IQ score places him just two IQ points from a "listed" impairment, which under the regulations requires, in and of itself, a conclusion of disability. See *id.*, Appendix I, Section 12.05(C).