

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,757

)

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-year-old man with a ninth grade education and a work history of heavy construction labor and machine operation. The medicaid records indicate that the petitioner suffers from chronic back pain, diabetes, chronic bladder infections, a persistent diabetic skin ulcer on his abdomen, and "almost morbid obesity" (the petitioner is five feet, 9 nine inches tall and weighs 279 pounds).

The worst of the petitioner's health problems, however, appears to be psychological. In connection with an application by the petitioner for Vocational Rehabilitation Services the petitioner underwent a thorough and detailed psychological assessment in November, 1993. The psychologist's report of that evaluation concludes with the following assessment:

Evaluation Findings:

## MSE

The Mental Status Examination revealed [petitioner] to be oriented to person, place, and time. As previously mentioned, the client was dressed appropriately and his personal hygiene and grooming were adequate. [Petitioner] demonstrated a slow personal tempo but no other unusual motoric activity. At times, he tended to speak somewhat excessively but his speech was within normal range. He did demonstrate a angry quality to his speech on occasion. Overall, the client presented as a lonely, depressed, and anxious individual.

[Petitioner] self-reported a moderately high level of anxiety and said that he has always been "more or less" anxious. The client also acknowledged a moderate level of angry feelings. Interestingly, at this point of the interview, he commented that he gets discouraged with the government. He self-reported a moderately high level of depression and said that he has recognized being depressed in the past two to

three years but feels he has probably been lonely and depressed his entire life. He then related that since his mother died when he was young and his father was required to work a great deal, he spent much of his time home alone. Assessment of neurovegetative signs revealed occasional problems with sleep onset and chronic problems with sleep maintenance. His appetite was reported as decreased. The client denied any perceived problems with attention and concentration or with memory. Anhedonia was acknowledged. There was no indication of a perceptual disturbance (e.g., illusions, hallucinations). With respect to thought content, [petitioner] indicated that he ruminates about worries and concerns. There was no suggestion of compulsions, phobias, derealization or depersonalization experiences. Nor was there any evidence of ideas of reference and/or influence. [Petitioner] acknowledged feelings of uselessness and worthlessness. With respect to suicidal ideation, the client said that he experienced such thoughts when divorcing his first wife but never made an attempt and does not currently have any such thoughts. He denied any homicidal ideation as well.

Cognitive screening revealed the client was able to perform serial sevens. He was also able to spell a five letter word both forward and in reverse order, suggesting that he is able to attend and concentrate. Immediate recall, and recall following a three minute delay, were good. Assessment of basic language functions revealed that this man could name to confrontation, repeat a simple phrase, follow a three stage command, and read and comprehend a simple sentence. He was also able to compose and write a sentence but made a spelling error, and left off punctuation. The client's performance at copying a three-dimensional design was adequate. Simple verbal reasoning and verbal abstraction were good. Overall, [petitioner] presented as an individual of average intelligence.

#### Review of Previously Administered MMPI-2:

[Petitioner's] MMPI-2 profile was valid. It revealed a pattern of chronic psychological maladjustment. Anxiety, tension, and depression were indicated. The client was reported to feel that he is helpless, inadequate, and insecure and that his life is not going well. He attempts to control his worries through intellectualization and unproductive self-analysis. Problems in personal relationships were also indicated. The client's responses indicated that he is behaviorally withdrawn. He has difficulty trusting or loving anyone. It is likely that this man needs a great deal of emotional support at this time. His low self-esteem and feelings of inadequacy make it difficult for him to become energized toward therapeutic action. [Petitioner] would not do well in insight-oriented psychotherapy but might respond to supportive and directive therapy.

#### Conclusions and Recommendations:

The above findings reveal that this man is experiencing a depressive neurosis, as well as a characterological disturbance.

The following DSM III-R diagnostic configuration is suggested by the current data:

Axis I: 300.40 Dysthymia, Primarily Type, Early Onset (With Anxious Features).

Axis II: 301.90 Personality Disorder Not Otherwise Specified (Avoidance and Self-Defeating Traits).

Axis III: Obesity

Diabetes (Adult Onset)

Congenital Exstrophy of the bladder

Status Post Bilateral Ureteral

Sigmoidostomies.

Axis IV: Severity of Psychosocial

Stress - Moderate

Axis V: Global Assessment of Functioning Scale (GAF)

Current: 50

Current: 50

It is recommended that this man participate in a cognitive behavioral approach to psychotherapy. This should include relaxation training, cognitive restructuring, and social skills training. Supportive psychotherapy should also be included. The recommendation of psychotherapy was discussed with this man and he indicated that he would be willing to be seen in psychotherapy. However, given his avoidant style, it is not unlikely that he would not follow through on the recommendation, or drop out of treatment early. It is therefore suggested that a performance contract be considered in which services to this man are made contingent upon his complying with recommendations.

The record also includes the following assessment from the petitioner's counselor at the Division of Vocational Rehabilitation (which makes references to the above psychological report):

[Psychologist's] report as always contains an accurate and complete history so I will not repeat that. I would like to share my observations.

There is marked dysfunction in social and vocational activity. [Petitioner] has not maintained a job longer than 30 days since 1987. [Petitioner] presents himself as a skilled heavy equipment operator and mechanic. His vocational history does not bear this out. He also presents as very hostile against most former employers including his wives. [Petitioner] alienates individuals who try to befriend him in a short period of time. He is intensely jealous of people's perceived good luck or success and persists at criticizing them for it. [Petitioner's] wife initiates most communication with me and she comes with him to most appointments. He subjects her to an ongoing barrage of derogatory statements. My attempts to redirect him are rarely successful. He is dependent on his wife to conduct the business of their household, yet criticizes everything she does.

This is a very brief description of [petitioner's] social and vocational dysfunction. [Petitioner] has had one previous attempt at using VR services. The result was case closure due to missed appointments. We are again in the process of attempting to work with [petitioner], but I do not feel he would be able to be successful based on his history of self defeating actions. [Petitioner] is again unemployed, his most recent work was operating a road grader. This job lasted less than a month by [petitioner's] report.

Based on the above assessments, as well as the medical evidence fully documenting the petitioner's

considerable physical impairments, it is found that the petitioner, for at least the past several years, has been unable to engage in any substantial gainful activity 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.

As found above, the medical evidence in this case establishes that the petitioner suffers from a combination of severe physical and mental impairments, the overall effect of which renders him unable to engage in any sustained work activity. Perhaps, with Vocational Rehabilitation Services and ongoing psychological counseling the petitioner may at some point in the future become employable. For at least the last few years, however, this has not been the case. The Department's decision is, therefore, reversed.

###