

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,780

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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 twenty-eight-year-old single man with an eleventh grade education. He worked fairly steadily from 1987 to 1991 in maintenance and kitchen jobs. From 1991 until November, 1994, he worked only sporadically at a variety of jobs. In November, 1994, he began working 25 to 30 hours a week at a fast food restaurant where he is still employed.

The petitioner's primary health problem is diabetes. The petitioner maintains that his problems keeping jobs has been due to some of his employers' intolerance of his medical condition, which, the petitioner maintains, has caused him to miss work and limited his concentration and stamina on the job.

The medical evidence in the case is scant. The hearing was continued for nearly a year to allow the petitioner, his representative, the Department, and eventually the hearing officer to attempt to obtain medical reports and opinions from doctors the petitioner had seen over the years. Office notes from the petitioner's primary treating physician show that the petitioner was seen several times intermittently from 1987 to 1993 for his diabetes and other problems, including headaches, lower back pain, and "social problems". Nothing in the physician's office notes indicates, however, whether any of these problems interfered with the petitioner's ability to work. In response (dated August 9, 1994) to a residual capacities questionnaire sent to him by the hearing officer the petitioner's physician stated:

After reviewing the questionnaire on [petitioner], I feel somewhat frustrated in trying to assess his functional capacity, partly because I see him very infrequently, because he is quite noncompliant in following my recommendations, and because I have not seen him since September 10th, 1993.

I am really unable to answer questions regarding his ability to interact in the workplace, although

[petitioner] has had problems in the past with interpersonal interactions and, for a long period of time, was out of work and states no one would hire him because of his diabetes, so he had given up.

Since I have not seen him in almost a year, I am really unable to comment on whether or not he has been disabled for a period of twelve months.

The record also contains a consultative psychological report that also does not address the petitioner's ability to work. In response to a mental capacity assessment form subsequently sent to him by the hearing officer the consulting psychologist noted that the petitioner was "moderately limited" in his abilities to maintain concentration for extended periods of time, complete work without interruptions, and to interact with the public.

Nothing in the record indicates that the petitioner's problems worsened significantly after 1991, when he last worked steadily, or improved significantly in November, 1994, when he returned to work. The petitioner's testimony and the medical reports indicate that the petitioner's lack of work from 1991 to 1994 was primarily due to his frustration with individual employers and having "given up" trying to find other work.

There is no question that the petitioner has medical problems that affect his ability to perform certain tasks. Neither the medical evidence nor the petitioner's testimony establishes, however, that these problems prevented the petitioner from performing all work activity for any consecutive twelve-month period. The petitioner worked steadily despite his problems until 1991 and from November, 1994, through the present time. The evidence simply does not establish that from 1991 through 1994 the petitioner's condition was any worse than it was prior to 1991 or since November, 1994, or that he was totally disabled from working during this period.

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.

In this case the medical evidence and the petitioner's testimony simply does not establish that the petitioner was totally disabled from all work activity for any consecutive twelve-month period. Therefore, the Department's decision is affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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