

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,981

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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 forty-six-year-old man with a high school education. In the late 1970s and early '80s the petitioner operated his own restaurant. He then worked for a cleaning service and as a cook in fast food restaurants. He last worked in June, 1993.

The petitioner suffers from longstanding diabetes. For financial reasons, however, he went without medical treatment for about five years until April, 1994, when he was hospitalized on an emergency basis after a sudden weight loss and losing feeling in his feet and hands.

Besides the records of that hospitalization, the medical record in this matter consists of two sets of responses from the petitioner's treating physician to interrogatories posed by the petitioner's attorney. In a report dated October 17, 1994, the treating physician listed the petitioner's medical problems as "insulin dependant diabetes, diabetic neuropathy, (and) depression--chronic and acute". In responses to specific questions regarding the likely duration of the petitioner's problems, the effects they would have on his ability to work, and their severity in relation to the "listings" (see infra) the physician responded as follows:

The patient will have Diabetes for the rest of his life and his present problems will undoubtedly also last a lifetime with the likelihood of developing more problems and complications.

...

The patient may have numerous episodes of Ketoacidosis which may or may not require hospitalization - see question 4. This patient's condition will deteriorate with the inadequate control of his diabetes and the likelihood of depression is enhanced.

...

Regulation A[20 C.F.R. Part 404A, Appendix I, § 9.08(A)] will apply as [petitioner] is beginning to show signs of increasing diabetic neuropathy and pain and paresthesia ["sensation of numbness, prickling or tingling; heightened sensitivity." Taber's Cyclopedic Medical Dictionary] of the extremities.

...

[Petitioner] is presently on an Insulin Coverage Routine which would interrupt his workday at least 2-3 times a day. Also because of the brittle nature of his diabetes, he could have spells of hypoglycemia and ketoacidosis requiring immediate attention.

In follow-up responses dated November 8, 1994, the treating physician checked off that the petitioner's neuropathy causes him "significant interference with the use of his: hands, fingers, arms, legs, and feet", and that for duration:

Due to the lifetime nature of Diabetes, he will be affected for the rest of his life. Indeed, this neuropathy will increase in intensity.

In the absence of any contradictory (or, for that matter, any other) evidence, it is found that the petitioner's condition and limitations, and how long they will last, are as described above by his treating physician. It is further found that the above limitations meet the severity for presumptive disability under the "listings" (see infra) for diabetes mellitus.

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.

Under the regulations an individual is presumed to be disabled if his condition meets or equals one of the "listings" of impairments in 20 C.F.R. § 404, Subpart P, Appendix I. Section 9.08 of the "listings" includes the following under "Diabetes Mellitus":

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station . . .

As noted above, the petitioner's treating physician has specifically indicated that the petitioner meets the above definition. Therefore, the Department's decision in this matter is reversed.

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