

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,990

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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 man who, though functionally illiterate, managed to finish high school. His only work experience is as an auto salvage yard mechanic.

He has not worked since 1992, when he fell off a crane and injured his back. Since that time he has experienced chronic back pain and numbness in his left arm and leg. The record shows that in January, 1994, the petitioner sought treatment in a hospital emergency room at which time his diagnosis was muscular strain. A subsequent neurological examination and x-rays ruled out any neurological or arthritic condition.

In May, 1994, the petitioner underwent a consultative mental status examination. He was tested as having a verbal IQ of 65, performance IQ of 81, and a full scale IQ of 72. The evaluator noted the petitioner's literacy deficiencies and described some moderate avoidant and aggressive personality tendencies.

In January, 1995, the petitioner underwent a chiropractic examination, which yielded the following assessment:

Radiograph examination of the patient on 01-25-95 included a 5 view lumbopelvic series with lateral stress determinations. We find that on right lateral flexion there was no lateral flexion performed at L4 or L5 with only poor lateral flexion at L3. There is none of the normal expected joint coupling motion. (This means that as the spine is laterally flexed, it should rotate to the same side, and this did not occur at any level.) On left lateral flexion there was again no lateral flexion L4 and L5 and no joint coupling at L5. There was inadequate joint functioning from L4 through T12 and no joint coupling T11 through T8.

In the cervical spine we find decreased cervical contour from C4 through C2 with a reversal of cervical contour at C5. On left lateral flexion there is good joint coupling C5 through 3. On right lateral flexion there is no joint coupling C7 through C3. Lateral flexion itself is bilaterally restricted. Overlay analysis of flexion and extension finds complete fixation on flexion from occiput through C3 with additional hypomobility at C4-C7. Extension is fixated C2 through 4 with additional hypomobility C1-C2 and C6-C7.

#### Initial Clinical Assessment:

Multiple moderate unresolved sprains of the cervical, thoracic, lumbar and sacroiliac articulations with attendant upper and lower extremity numbness, back and neck pain.

#### Treatment:

Patient is currently unemployed and functionally illiterate. No treatment plan was initiated because of his inability to make any payment whatsoever. He was advised that I expect that we could significantly improve his physical functioning and decrease his pain and numbness with the application of 10 to 12 high velocity, short amplitude chiropractic spinal adjustments. Without these treatments I expect that he may well get worse. He already has significant nerve pressure and irritation causing the pain and numbness. Until these problems are fixed, I expect that he will likely remain unemployable.

Although in terms of severity (though not diagnosis) the above assessment conflicts with the petitioner's neurological exam a year earlier, there appears to be little question that since his accident the petitioner has experienced chronic pain and discomfort due to "multiple unresolved sprains" in his back and neck.

The petitioner and his girlfriend testified that the petitioner cannot do heavy lifting around the house, and that the petitioner had to abandon a recent work attempt (farm labor) after a few days because he couldn't do the lifting.

In a March 1994 decision regarding an earlier application for disability, DDS found that the petitioner's back problems prevented him from at least doing heavy lifting. In its instant decision DDS (despite the chiropractor's findings, supra) did not find that the petitioner has any significant exertional limitations; but it did conclude (presumably on the basis of the consultative mental status exam, supra) that the petitioner could not perform his former work and certain other jobs because he is now limited to work that is "low stress".<sup>(1)</sup>

Both the conclusions by DDS that the petitioner cannot do heavy lifting and that he is restricted to low stress work activities, though not in and of themselves indicative of a total disability, nonetheless constitute findings by the Department of "significant work-related impairments" (see infra). Unfortunately, however, in both of its decisions DDS either ignored or was unaware of the regulations (infra) that provide that a person with the petitioner's intellectual deficits (IQ under 70) who has significant other work related impairments meets the "listings" as having a presumed disability.

Regardless of DDS's conclusions, the hearing officer specifically finds that since his accident in 1992 the petitioner's back problems have at least prevented him from engaging in heavy lifting, and thus constitute an additional and significant work related limitation.

## 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 regulations further provide that an individual who has an impairment of the severity described in the "listings" (20 C.F.R. § 404, Subpart P, Appendix I) is considered to be disabled. 20 C.F.R. § 416.925. Section 12.05 of the listings, under "Mental Retardation and Autism", provides that the listing is met when the following is shown:

C. A valid verbal, performance, or full-scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitations of function.

20 C.F.R. § 416.921 specifies that impaired abilities in, inter alia, "lifting" and "responding appropriately to supervision, co-workers and usual work situations" constitute significant work-related limitations.

As noted above, DDS in both its past and present decisions in this matter has found that the petitioner has such limitations in addition to his intellectual deficits. Applying the above regulations to the Department's own findings, as well as to those of the hearing officer (*supra*), it must be concluded that the petitioner meets the listings under § 12.05C and is, therefore, disabled.<sup>(2)</sup>

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1. See DDS Mental Residual Functional Capacity Assessment, dated March 1, 1995. The DDS assessment specifically notes problems "from psychologically based symptoms" that would affect the petitioner's pace, consistency, and ability to complete work.
2. It must be noted that the medical evidence indicates that the petitioner's back problems are probably amenable to treatment. It is, thus, unlikely that the petitioner will meet the definition of disability indefinitely. The petitioner would be well advised to follow through on any medical advice regarding his back problems, and, if he has not already done so, to avail himself of vocational rehabilitation services to consider and help prepare for future employment.