

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,026

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her application for Medicaid based on her alleged failure to show that she will be under a disability for twelve months.

FINDINGS OF FACT

1. The petitioner is a sixty-one-year-old woman who has a high school education. Her last three years of work have been spent as a housekeeper in a motel where she earned \$6.75 per hour. In her employment, the petitioner was required to perform unskilled labor which included frequently pushing carts, lifting linens, dusting, making beds, cleaning, moving and arranging furniture and, occasionally turning mattresses, hanging drapes or moving a television. She had been working six to seven hours per day, all of it either standing or walking, for four days per week before an accident caused her to leave her employment. Before her housekeeping work, the petitioner had no significant work history outside of her home.
2. On January 11, 1994, the petitioner fell off of the roof of her mobile home while removing snow. She underwent emergency surgery for a repair of a broken femur in her left leg. She was placed on crutches and had a fairly uneventful recovery with the exception of the development of thrombophlebitis over the medial aspect of her left calf which was quickly resolved through therapy and medication.
3. By April 5, 1994, the petitioner had attended three follow up visits and had no complaints about her condition at any time. She was taken off crutches on that date and was allowed to guardedly bear weight on her leg. It was expected at that time that she could bear her full weight of 204 pounds in two to four weeks and that she would experience full recovery by mid-July of 1994. Based upon that expectation of recovery, her claim for Medicaid benefits was denied in July of 1994.
4. In late July of 1994, X-rays showed that the petitioner's fracture had healed well and she was released for part-time work with restrictions on prolonged standing, walking and stair-climbing. When she returned to work, she found that she could work no more than two hours at a time due to pain and

fatigue. Her legs hurt and her feet and ankles swelled. On her doctor's advice, the petitioner began to walk for thirty minutes every morning and evening to build up her stamina. Yet, almost three months later she continues to feel pain and fatigue upon any exertion of two hours or more. Her doctor also recommended physical therapy but she does not have the money to pay for that service.

5. On August 16, 1994, her orthopaedic surgeon wrote a letter in support of her disability claim. In it, he stated that he had seen the petitioner on August 15, 1994 and while he noted no physical abnormality he did get the "impression that her enforced inactivity had resulted in a generalized deconditioning and reduction in her capacity for work." He advised her to do strengthening activities for the lower body, to engage in progressively longer walks and to obtain physical therapy. It was his opinion that:

Until such time as she regains sufficient strength and endurance, her ability to pursue gainful employment will be severely limited. Complicating factors include her age and the fact that her previous employment required light-to-moderate manual labor. [Petitioner's] left femur fracture appears to be healed at this point; however, her leg is not back to normal. Although it is difficult to predict a time course for her recovery of her strength and endurance, it would not be unreasonable to expect another six to eight months to pass before she enjoys a full recovery.

6. Currently, the petitioner spends her days doing dishes and laundry in short bursts and crocheting and playing cards in the evening. She works at the motel as a

housekeeper for four hours per week and earns a little over \$100.00 per month.

7. On September 8, 1994, her family physician provided an assessment of what he felt the petitioner's abilities would be in January/February of 1995. He felt she would be limited to carrying no more than ten to twenty pounds on an occasional basis and five to ten pounds on a frequent basis due to muscular strength and endurance impairments, which, in his opinion, were caused by her enforced confinement and restricted activity for those early months following her accident. He felt she would be able to stand or walk only thirty minutes without interruption and could sustain walking and standing activities for a total of only four hours per day by that time. She would be able to sit for up to eight hours per day. In addition, he felt that she would be able to only occasionally climb, stoop, crouch, kneel and crawl due to muscular weakness of her left leg and generalized deconditioning and would be limited with regard to pushing or pulling until at least February of 1995.

8. Based on the above evidence, all of which is consistent and credible, it is found that by January 11, 1995 the petitioner will most likely be unable to return to her former job (primarily due to her inability to lift only light weights and stand for only short periods, and will be

able to perform only those activities outlined in paragraph five above.

#### ORDER

The decision of the Department is reversed.

#### REASONS

Medicaid Manual Section M211.2 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 will not be able to perform the activities, particularly lifting, walking and standing, necessary to her former employment within twelve months of the date of her

accident. Her physicians' descriptions indicate that the

petitioner will be able to do no more than sedentary<sup>(1)</sup> work on a part-time basis by January 11, 1995.

The petitioner at the age of sixty-one is classified as a worker of "advanced age" under the Social Security regulations. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.00(d). Even with her high school education, her current limitation to sedentary work and her unskilled work history dictate a decision of "disabled" under the Medical Vocational Guidelines in the Social Security regulations. 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.04. Based on the updated information presented by the petitioner at her hearing, the prior decision of not disabled should be reversed.

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1. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in

carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. Sec. 416.967(a)