

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,141

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-five-year-old woman who applied for Medicaid when she was fifty-three and was denied. She has completed ten and a half years of school and has no relevant work experience. She worked until last November babysitting her grandchildren for ten dollars per day.
2. The petitioner has fatigue, stiffness and soreness in her body which limits her ability to lift objects as heavy as or heavier than her small grandchildren. She has pain in her knees, back and elbows made worse by sitting or standing and which require her to change positions and take breaks as needed. She has been able to watch her grandchildren as long as she does not have to lift them up often, although she is able to hold them in her lap. She has been depressed since the death of her husband and son and went to psychotherapy to deal with this for a while.
3. The medical evidence shows that the petitioner has had intermittent treatment for stiff and painful joints since at least 1989. She reported as late as 1992 that her joints would limber up as she got them moving. She has been examined on several occasions and it has been found that she has good range of motion in her joints, as well as adequate power and strength and very little by way of objective findings which would confirm any underlying serious disease. Stiffness and tenderness has been noted upon examination and she has been treated with Tylenol and Relafen for those problems. In 1995, a rheumatologist said that the petitioner's symptoms were not severe and "do not seem to limit the patient's functional abilities as observed in the office."
4. The petitioner has been involved with therapy and psychotherapy related to situational depression since 1982. Her situation worsened after the death of her husband in 1990. She was also treated for post

traumatic stress disorder following the death of her son. In 1990, her psychologist treated her with antidepressants and noted that she was anxious, easily overwhelmed and had an impaired ability to concentrate on complex tasks or to meet intense production norms. Nevertheless, the psychologist felt the petitioner could function in a supportive work environment. In 1994, her psychotherapist stated that the petitioner had no major thought or affective disorder but was passive, dependent, obsessive and avoidant. Another psychotherapist described her as having a mild case of depression and a panic disorder.

5. Based on the above evidence, it is concluded that the petitioner has some pain and fatigue associated with her polyarthritis which would limit her from lifting objects as heavy as a small child (twenty pounds or more) but which does not prevent her from lifting light objects. Otherwise, she is functionally unrestricted with regard to standing or walking during the course of the day. To the extent that the petitioner's statements are contrary to this finding they are found to lack credibility as they are not supported at all by the medical evidence. The petitioner's mental impairments are found to be not severe and to have no significant impact on her ability to perform a wide range of jobs.

ORDER

The decision of the Department to deny the petitioner Medicaid up to age 55 is affirmed but is reversed since her 55th birthday.

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 petitioner's capabilities are best described by the definition of "light work" found in the regulations:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 416.967(b)

Under the Medical-Vocational Guidelines at 20 C.F.R. § 404, Subpart P, Appendix II, a person with a limited education (less than high school) and an unskilled work history who is limited to light work is not disabled unless she is at least fifty-five years old. Rules 202.01 and 202.10. Therefore, the petitioner met the criteria for disability when she turned fifty-five on October 4, 1996, but not before.

#