

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,164

)

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

The petitioner is a forty-five-year-old woman with a high school education. She suffers from severe osteomyelitis in both her heels. However, except for a recent two-month period the petitioner has maintained year-round employment as a school bus driver. She currently works between 14 and 20 hours per week at a rate of pay of \$10.00 per hour. Her monthly earnings are between \$700.00 and \$800.00.

ORDER

The Department's decision is affirmed.

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 regulations further provide that if an individual is currently engaging in substantial gainful activity (SGA) she cannot be found disabled regardless of her medical condition, or age, education, or work experience. 20 C.F.R. § 416.920. A person is presumptively engaging in SGA under the regulations if

her earnings are more than \$500.00. The petitioner in this case does not dispute that she is engaged in SGA. <sup>(1)</sup>

In light of the above the board is bound by law to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. The petitioner was advised that if her condition worsens, or if she is unable to continue working, she should reapply for medicaid.