

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,504

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare denying her application for Medicaid based on her alleged failure to show that she meets the definition of a disabled individual.

FINDINGS OF FACT

1. The petitioner is a fifty-seven-year-old woman with a high school education whose most recent work experience is as a housekeeper at a motel. In her position, she was required to clean, vacuum, make beds and occasionally move large objects. Prior to that job she worked at a dry-cleaning establishment where she ran a cash register and lifted heavy loads of clothing.
2. The petitioner quit her job and gave up her employment in September of 1994, due to severe pain in her knees, hips and hands. She had been treated since December of 1993, for knee pain which was thought at that time to be arthritis. Her right hip began bothering her as she walked up and down stairs in her employment. Her hands hurt her when she performed reaching, grasping or repetitive actions.
3. In December of 1994, the petitioner first saw the physician who is currently treating her. That physician's opinion is that the petitioner has carpal tunnel syndrome of the left hand, synovitis of the left thumb, non-specific arthralgias, and hypertension which is well-controlled and hyperlipidemia (high cholesterol). The physician notes that the petitioner gets a sensation of tightness and pain when she flexes her hands. She has been given medication and a left splint for the pain and swelling in her hands and told to decrease activities which cause her to use her hands repetitively. Her physician further stated:

It is highly likely that she will continue to have pain in her knees, hip and thumbs for at least the next 12 months, if not indefinitely.

[Petitioner] can probably sit for six hours in an eight hour day if she has a chair that gives her good

support and allows her feet to rest on the floor. However, it would be difficult for her to do sustained activity with her hands, such as pushing, pulling or performing fine manipulation, given her left carpal tunnel syndrome, the synovitis in her left thumb and her previous history of left lateral epicondylitis of her elbow. Given that her joints are all somewhat hypermobile, she has a great deal of flexibility but little strength. A change in this, even with strengthening exercises, is unlikely.

This medical report, being uncontroverted in the evidence, is found to be an accurate reflection of the petitioner's medical condition and functional ability.

4. The petitioner claims that she has constant knee and hip pain when she stands for more than five to ten minutes and gets severe pain in those areas after walking for more than ten minutes. She cannot bend or stoop without pain in her knees. Even when sitting, she has pain in her knees and hips and must frequently change her position and stretch out her body. She also finds it useful to elevate her legs several times per day.

The petitioner cannot use her left hand to lift any weight over five pounds. Her right hand can lift more weight but she cannot use it repetitively. She tires easily due to pain and lack of strength and must nap for at least an hour per day.

5. The petitioner felt she was unable to live alone because of her restrictions and now lives with her daughter and grandchildren. Her daily activities include bathing, light cooking and some dishwashing and picking up around the house. She does no laundry because she cannot lift wet loads, cannot make a bed because of her hand weakness and cannot climb stairs because of her hip. She is unable to use a can opener in the kitchen and cannot pick up her small grandchildren. She has had to severely restrict her indulgence of her hobbies of drawing, crafting, and sewing because of pain in her hands.

6. As the petitioner's testimony is basically consistent with her doctor's records and opinion it is found to be an accurate reflection of her abilities.

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 Social Security regulations governing disability determinations, an individual of advanced age (over 55), with an unskilled work history and a high school education is disabled if she is limited to

"light work" or less. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 202.04. Light work is defined as follows:

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)

The petitioner cannot lift twenty pounds at a time or ten pounds on a frequent basis due to the disease in her hands. Neither can she do a good deal of walking or standing or sit using arm or leg controls. Her limitations are even more severe than those which would disable her under the above rule. As such, she has a condition which clearly meets the definition of disabled.⁽¹⁾

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1. Because of her advanced age, in order to be found "not disabled" under the regulations, the petitioner would have to be capable of lifting more than 50 pounds at a time and capable of lifting or carrying objects weighing 25 pounds. The evidence does not support such a finding. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 203.14