

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,536

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Appeal of)

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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 forty-year-old woman who has completed two and a half years of college where she studied journalism and art. She has a long work history which primarily encompasses skilled sedentary work, such as secretarial, bookkeeping and writing.
2. The petitioner has not worked since 1991, following an accident in which the doors of a bus closed on her for a few minutes. She was working at the time as a secretary but was forced to leave some months later due to absenteeism from illness.
3. The petitioner claims that since her accident she has constant pain throughout her body, repeated migraines, decreased mobility in her spine and severe fatigue. She has had extensive medical work ups and treatments, including medications, chiropractic manipulation, massage, a home traction unit and unsuccessful periods of physical therapy. Her condition has eluded diagnosis because of a notable lack of physical and laboratory findings. However, her physicians clearly believe that she does experience the pain, headaches and fatigue she describes. In August of 1995, she had a work up in the immunology division of a university hospital where she was first told that her history and physical findings (tenderness to light palpation) indicated that she had myofascial pain syndrome or fibromyalgia. She was treated for that illness with medications and cervical traction and was encouraged to increase her level of physical activity on a daily basis.
4. The petitioner is currently being treated by three physicians, a medical doctor, an optometrist and an osteopathic doctor. The medical doctor agrees with the diagnosis of myofascial pain syndrome and states that it makes her "unable to work at a desk full time or do manual labor due to pain."

Her optometrist has stated that she also has a deficient binocular fusional system which causes her eyes to fatigue easily and which causes her difficulty and stress when forced to do activities which require comfortable and efficient vision. He believes that the petitioner would have difficulty staying visually attended to a task and that the problem cannot be corrected by glasses.

Her osteopathic physician has stated that the petitioner has somatic dysfunction secondary to trauma with pain and loss of motion which prevents her from carrying out activities such as lifting, standing and walking and have caused her to have a severely limited life style. He also states that the petitioner's ability to understand and remember all but the most simple instructions and maintain concentration and attention are compromised by multiple traumatic strains and that the result is a markedly limited ability to complete a normal workday and workweek and to perform at a consistent pace without an unreasonable number and length of rest periods. He also feels that she is unable to travel in unfamiliar places or to set realistic goals or make plans independently of others. He stated also that she is only minimally able to accomplish activities of daily living. He believes that the above problems prevent her from working and will for at least one year.

The opinions of her physicians are not controverted by any substantial evidence of record and are found to represent the facts in her case.

5. The following allegations of the petitioner are found to be credible because they are consistent with the findings of her physicians. The petitioner currently has difficulty sitting, standing or even maintaining her posture due to her medical condition. She is easily fatigued and must rest even after bathing herself. All of her energy goes into her self-care. Her vision problems and headaches make it difficult for her to read or write for more than three minutes at a time or to think in quick fashion. She also has problems with her visual judgment and walks into corners and walls. Her current treatment (which includes medications and vitamins) has improved her slightly in that she has fewer headaches and is able to walk around the block before she needs to rest. Her cooking, shopping and laundry needs are performed by friends. She also needs assistance in cutting her food and even in picking up a glass of water. She relies on friends for transportation as she cannot drive. She has not worked since forced to quit her last job.

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 petitioner has demonstrated that she has impairments due to myofascial pain syndrome which are

severe enough to keep her from returning to her prior sedentary types of employment due to pain and fatigue and which would prevent her from performing even basic sitting and light lifting functions needed to do any kind of sedentary work. See 20 C.F.R. § 404, Subpart P, Appendix II. In addition, she has significant non-exertional impairments in the form of visual problems and lack of concentration and memory which would also significantly interfere with her ability to work. The Department has not presented any evidence that the petitioner is capable of performing any other kinds of jobs given her combination of impairments. Therefore, it must be concluded that the petitioner has not been able to perform any substantial gainful activity from at least 1992 onward and will likely be unable to do so for at least another year.

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