

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,576

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare that he does not meet the disability requirements of the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a fifty-five-year-old man who has completed high school. He was in the army for twenty years and left with an honorable discharge. Since that time he has worked for several years as a farm laborer and most recently as a flagman for a road construction company, both unskilled occupations.
2. The petitioner has hypoxemia (insufficient oxygen in the blood) most likely due to emphysema as a result of many years of heavy cigarette smoking. He is subject to shortness of breath upon exertion or exposure to temperature extremes, dust or fumes. He also has intermittent pain in his left hip from degenerative joint disease. Both of these problems prevent him from doing his former work as a farm laborer or engaging in any occupation which requires heavy lifting, substantial physical exertion or extended exposure to temperature extremes, and dust or fumes, as occurred in his flagman job. The petitioner has had a number of other physical problems in the past including alcohol abuse, peptic acid disease, partial amputation of his left thumb, and hemorrhoids none of which significantly impact upon his ability to function at this time.⁽¹⁾ He has been able to get substantial medical assistance through Veterans Administration programs which pay 80% of his medical expenses. He does not like to go to doctors at the VA Center because it is too far (about one hundred miles) away.
3. The petitioner lives alone on a VA pension and cares for himself. He does his own cooking, housework, and laundry. He lives on the second floor and must climb the stairs to his apartment which causes him some pain. He walks to the store which is relatively nearby. (He lost his driver's license due to a DWI conviction.)
4. The petitioner's physician says that he is limited to lifting ten pounds on a regular basis and twenty

pounds on an occasional basis. He limited him to standing or walking for less than six hours per day but feels that he can sit for a full six hours out of an eight hour day. He does not limit the petitioner with regard to pushing, pulling, reaching, handling, feeling, seeing, hearing, and speaking and only occasionally limits him with regard to climbing, balancing, stooping, kneeling, crouching and crawling. He does restrict the petitioner from working around dust and fumes. His physician further noted in his report that "I made it clear to [the petitioner] that I do not feel he is totally disabled from all forms of work, but do feel that he would be unable to return to active farm work that he has done in the past". As his physician's opinion is found to be based upon adequate knowledge of his condition and is uncontradicted by any substantial evidence⁽²⁾ in the medical record, it is adopted as fact herein.

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 presented evidence that he cannot return to his prior employment as a farm laborer or flagman because of the strenuous physical requirements or unusual exposure to temperature extremes, dust and fumes found in those jobs. The issue is whether the petitioner has the residual functional capacity to do other jobs.

The Medical-Vocational guidelines found at 20 C.F.R. § 404, Subpart P, Appendix 2, Rule 201.04 indicate that a 55 year old person (a "person of advanced age") who has a high school education, but who has done only unskilled work and who is able to perform even light work due to medical impairments is not capable of performing substantial gainful activity. "Light work" is defined in the regulations 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)

Although his doctor thought he was not "totally disabled" (however he defines that term), the restrictions he documented with regard to the petitioner's work abilities certainly place the petitioner in no higher exertional group than "light work".⁽³⁾ Such an extreme exertional limitation, coupled with an unskilled work history and advanced age, squarely place the petitioner in the "disabled" category of the Social Security medical-vocational guidelines listed above. As such, he must be found eligible for Medicaid.

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1. There are hints in the evidence that the petitioner has not controlled his problem with alcohol and that it has impacted upon his social life, figuring prominently in his recent divorce. However, there is nothing in the evidence from which it could fairly be concluded that it affects his ability to work and the petitioner denies such an effect.
2. The consulting physician used by the Department made essentially the same physical findings as the treating physician (including a finding of possible significant chronic obstructive pulmonary disease) although no functional assessments were made. Functional assessments were made by a reviewing physician at DDS who did not see the patient which were less restrictive than the treating physician's findings and concluded that the petitioner could return to his former employment. However, those findings are given less weight and rejected to the extent that they are inconsistent with the treating physician's because they are not supported by the medical evidence and petitioner's credible testimony and are not based upon personal knowledge or examination of the petitioner.
3. It is certainly arguable that the petitioner does not even meet the criteria for light work since he is restricted in his ability to walk and stand. However, it is not necessary to split that hair as he is still disabled under the "light work" category.