

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,588

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Appeal of )

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### INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his 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 thirty-seven-year-old man with a tenth-grade education. He has worked at a variety of menial jobs, all of them of short duration. From 1979 to 1992 the petitioner was imprisoned.

The petitioner has a history of drug and alcohol abuse and has been diagnosed as having a "generalized anxiety disorder" and an "intermittent explosive disorder". The report of a consultative psychological examination performed in March, 1995, noted that the petitioner leads a reclusive and restrictive life, mostly watching T.V. The report did not describe any other bizarre or unusual behavior, but noted the petitioner's history of substance abuse, criminal activities, and overall lack of judgment.

For the past year the petitioner has received treatment at a community mental health service. In February, 1995, on a Department general assistance form, the petitioner's therapist estimated that the petitioner's disability would last another three months based on his "clinical presentation and on the trial of medication he has been prescribed". On June 9, 1995, however, the therapist submitted the following narrative report of the petitioner's condition and progress:

[Petitioner] has been treated at this agency by [name], R.N.P., and myself for approximately one year. During that time, he has been in group treatment for anger management and occasional individual sessions. This treatment has addressed behavior that might be seen as consistent with intermittent explosive disorder, 312.34 this behavior, however, might also be seen as consistent with chronic substance abuse, and a trait of at least one personality disorder. Complicating the clinical picture, are episodes of depression, and chronic sleep disorder. There exist in [petitioner's] life antecedents that

could lead to a diagnosis of post-traumatic stress disorder.

Obviously, [petitioner] is a man who presents with a complicated clinical picture. [RNP] has been prescribing an anti-depressant for this man without significant improvement. It is the opinion of [RNP] and myself that [petitioner] has been unable to work for at least the past year, and remains currently unable to work.

The above report is uncontroverted by any other evidence in the record and is unfortunately consistent with the petitioner's documented work history and problems with the law. It is, therefore, concluded that the petitioner, for at least the past year, has been unable to engage in any substantial work activity on a regular and sustained basis.

#### 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.

In this case the recent uncontroverted opinion of the petitioner's mental health therapist establishes that the petitioner meets the above definition of disability. Therefore, the Department's decision is reversed.

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