

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,686

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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 fifty-one-year-old woman who has completed the sixth grade but who reads at a third grade level. She last worked in February of 1994, as a nurse's aide and left that job after she fell on the ice and twisted her back. She has worked in other unskilled occupations in the past, including a housekeeper and a cashier.
2. The petitioner has osteoarthritis of the spine confirmed by X-rays and a CT scan. She also has spondylosis at the C5-6 level of the spine and myofascial syndrome of the upper back and neck. In 1977, she had a spinal fusion of the L5 through S1 vertebrae of the spine. According to her physician, she cannot stand or walk for any length of time but can sit for an eight hour day. She is limited to occasional lifting and carrying of weights ten pounds or less and cannot repetitively push or pull controls. She was given a number of anti-inflammatory, pain relieving and muscle relaxing medications. However, her pain has persisted. In January of 1995, her physician stated that she could not go back to her prior employment but felt she could attempt part-time sedentary work once the pain in her back was controlled. In November of 1995, the physician wrote that she thought the petitioner might be able to do sedentary work if it did not involve prolonged standing or walking or require lifting more than ten pounds.
3. A consulting rheumatologist who saw the petitioner in September of 1995, agreed with her treating physician that the petitioner could not stand for a 6-8 hour shift and was limited to no more than 10-15 pounds of lifting at a time based on her history of back surgery and complaint of pain. Her examination results did not indicate any further physical restrictions.
4. The petitioner takes care of her own home at present but does no lifting or pushing or pulling actions,

such as those needed for vacuuming or doing laundry. She stands or walks for brief periods to accomplish chores and then rests again when the pain returns. She sometimes watches her grandchildren but is unable to pick up the smaller ones. She spends a good deal of her time trying to deal with her back pain and frequently sits or lies for long spells in her recliner. Several times per week she gets headaches which send her to bed.

5. The credible evidence indicates that because of her back pain, the petitioner can no longer return to her employment as a nurse's aide and is at best limited to sedentary jobs, those which would require little walking and standing and only very light lifting.

### ORDER

The decision of the Department 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.

The petitioner has pain which has prevented her from engaging in any but sedentary activity for over one year. She has shown that she cannot return to her former jobs, putting the burden on the Department to establish that there are other jobs which the petitioner could perform. See Fair Hearing Nos. 11,441 and 13,457. The decisional rules of the Social Security Administration indicate that a person who is fifty-one years old ("closely approaching advanced age") with less than a high school education and no transferable job skills is classified as "disabled." 20 C.F.R. § 404, Subpart P, Appendix 2, Table No. 1, Rules 201.09 and 201.10. Thus, the Department's decision is reversed.

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