

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,702

)

Appeal of)

)

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-one-year-old woman with a GED certificate. She has worked at a number of jobs, including preparation and short order cook, chambermaid, cashier, waitress, and nurse's aide.
2. In May of 1993, the petitioner injured her back unloading a truck at a fast food restaurant where she worked. Although she has made many attempts to return to work (cashier and fast food prep positions) since that date, she has never been able to sustain employment for more than a few weeks at a time due to pain in her back.
3. Since she moved to Vermont in May of 1994, the petitioner has been in treatment for her back pain. CT scan and X-rays show that she has degenerative back disease. Her physician has observed that she experiences significant back pain even upon minimal exertion. He has prescribed a number of muscle relaxers and pain relievers but they do not alleviate the pain, which he describes as "moderate". He would like to see her engage in some physical therapy but she has not been able to afford more than a couple of sessions. Her pain, which is due to a soft tissue injury, has caused observable changes in her station and gait including stiffness in her walk and limited flexibility in her forward flexion. Her physician finds her unable to engage in any prolonged sitting, standing, lifting, carrying and bending.
4. The petitioner experiences constant severe pain in her lower back which is moderated somewhat by her medications. Her pain level increases with any exertion, even walking or standing for more than one half an hour. Her inability to sit is limited to no more than one to two hours at a time. She cannot lift anything heavier than 10 pounds. Bending or twisting at the waist and crouching or crawling also produce significant pain. She still does her housework, but only very slowly. She has difficulty sleeping

about half of the time due to her pain. She is hopeful that a course of physical therapy may be able to assist her in returning to an employable state.

5. The medical evidence and credible testimony of the petitioner indicate that due to severe low back pain she has been unable since May of 1993, to do even a sedentary job. The evidence indicates that the petitioner does not have the capacity to engage in any substantial gainful employment, either her former jobs or others in the national economy.

ORDER

The Department's decision is reversed.

ORDER

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 substantial gainful activity for over one year. As such, she meets the definition of disability for Medicaid. The evidence indicates that the petitioner's low back pain has a chance of resolving with further treatment. She should note that a Medicaid recipient is required to seek and follow medically prescribed advice or risk losing her benefits unless she has a good reason for failing to do so. See 20 C.F.R. § 416.930. She is encouraged to seek medical attention and rehabilitation of her back muscles as soon as possible.

###