

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,726

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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-six-year-old woman with an eighth grade education. She can read and write at a basic functional level. The petitioner has a work history as a chambermaid and kitchen helper. She last worked as a dishwasher and salad preparer at a restaurant, which job she left in December of 1994, after almost eighteen months of employment. She was working almost thirty hours per week and earning over \$600 per month when she left.
2. The petitioner left her job due to dizzy spells. She later tried to get her job back but was unable to do so. She feels that she may be able to work as a cook or dishwasher but is unable to find any employment in that field.
3. The petitioner's chief medical problems are headaches, dizzy spells and shakiness. She has headaches 3-4 times per day and often feels sick to her stomach and must lie down for about thirty minutes per day. She also gets back pain about three times per week. She says that she feels depressed at times but has not had the money to go to mental health for more than one year. She is 5'4" tall and wights 210 pounds. She takes medication for depression and dizziness as needed.
4. The petitioner has been involved in family counseling for many years due to issues surrounding her children which required SRS involvement. She has also been a client of Vocational Rehabilitation about two years ago which agency prepared her for and helped her get her job as a salad prep cook. At that time (early 1994) her VR counselor remarked, "It would be unfortunate for this woman to receive disability as she is able to be gainfully employed as she had shown through her employment at the [name] Inn".
5. The petitioner has not had any regular medical care in the last year. She was examined by a physician

and psychologist pursuant to this application. The physician concluded that the petitioner does have some very mild hearing loss, episodic dizziness and some depression which is helped by medication. Her complaints of pain, back and neck pain were not supported by any physical findings or medical etiology. The examining physician commented that the petitioner's medical complaints were out of proportion to the physical findings.

6. The examining psychologist concluded that the petitioner has a full scale IQ of 74 which he classified as "borderline intelligence" and some depressive symptoms. He concluded that she could care for her own needs, socialize with others and perform simple tasks.

7. Based on these reports, DDS' physician concluded that the petitioner had occasional back and feet pain and headaches and dizziness from time to time which are not severe enough to cause any exertional or postural limitations. He also concluded that she has "subaverage", although at the bottom of the normal range, intellectual functioning and a frequent depressive affect. He concluded that the petitioner's ability to carry out detailed instructions or to perform at a consistent pace in detailed work was compromised. It was concluded that the petitioner "retains the capacity to do easy to learn, low-stress work that changes little from day to day". Her non-exertional physical and mental limitations were considered not significant enough to reduce the range of unskilled work available to her.

8. The petitioner spends her day cooking and cleaning for herself. She does not watch TV or read due to her reading and hearing problems. She mostly spends time talking with a friend who lives with her. She shops for herself but gets confused about paying and allows the cashiers to take what she owes. She says she feels pretty good now and that her dizzy spells are not a current problem. She is, however, unable to find employment.

9. As the findings made by DDS as set forth in paragraph seven are supported by the current medical evidence and not contradicted by any other evidence including the petitioner's own testimony, it is found to accurately reflect the petitioner's current medical condition.

ORDER

The decision of the Department is affirmed.

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 evidence in this case shows that the petitioner does not have an impairment or combination of impairments which are severe enough to prevent her from engaging in substantial gainful activity. There is no reason to believe that the petitioner is physically or mentally unable to return to her prior

employment. The fact that she is unable to find any current openings as a kitchen helper is unfortunate but not relevant to a decision on her medical disability.

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