

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,760

)

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-two-year-old woman who has a high school education and has done some post-high school coursework. She has worked in the past as an office manager in a variety store, as a cashier in an art supply store and as a cashier and salad bar prep cook in a supermarket. She has never held a job for more than one year. She last worked in July of 1994 when she quit her job due to severe pain.
2. The petitioner has had a variety of physical complaints over the last three years, including pain over many parts of her body, particularly her chest, and weakness in her hands and legs. She also fatigues easily and loses sleep due to pain and depression.
3. During 1992-1993, she had a number of tests which were most often inconclusive about the cause of her problems. She was found to have hypoglycemia for which she has been successfully treated. She was also believed to be affected by mitral valve prolapse, which was never objectively confirmed. During that time, her physicians decided to treat her with stress and pain management approaches. On October 19, 1992, she was recommended to the Vocational Rehabilitation program by one of her physicians because he thought her chest pain and weakness could affect her ability to work.
4. As a vocational rehabilitation client (based on panic disorder and mitral valve prolapse), she was assisted in finding light duty, low stress kinds of employment and was eventually hired on a part-time basis as a cashier and salad prep person at a supermarket in December of 1993. Her counselor was not optimistic that she could retain this employment. She did quit that job in July of 1994, due to pain and fatigue.
5. In October of 1994, the petitioner was seen by a psychologist who assessed her as:

". . . a cooperative woman who has the social skills, intelligence and motivation to manage a variety of jobs. She also presented herself as a woman at least mildly depressed and anxious experiencing moderate levels of physical pain, moderate physical weakness, and easy fatigability.

Although a psychiatric disorder may be complicating or exacerbating the symptomatic picture, [petitioner] would not disclose herself sufficiently to allow for this conclusion. I do not feel comfortable speculating with the limited information available to me in her records, from her lips, and from my observations.

Assuming employment which required exertion, keeping up with a normal work pace would be impossible for [petitioner]. [Petitioner's] physical abilities did appear restricted to me. She moved slowly and awkwardly. She was defensive to the touch of a handshake which was in accord with her symptom list. If [petitioner] received disability benefits, I believe she could handle her own finances without need of supervision.

6. During a medical consultative examination in the Fall of 1994, the petitioner was found to have no particular objectifiable problems with her joints or reflexes. The examiner noted that the petitioner did seem quite depressed and that it seemed to be exacerbating her entire condition.

7. In December of 1994, a new treating physician noted that she had mild diffuse swelling in her hands, a "somewhat gimp" gait and a stressed physical appearance. She felt the petitioner might have arthritis and depression and advised the welfare department that she should be exempted from employment for six months while the matter was being evaluated.

8. This physician referred the petitioner to a specialist in rheumatology who did a work up on her and who diagnosed the petitioner as suffering from depression and fibromyalgia. She was prescribed Trazadone, which she did not want to take. She was also prescribed regular aerobic exercise which the petitioner was reluctant to try. It was noted that she seemed depressed and unmotivated to cooperate with therapy.

9. In April of 1995, the petitioner began regularly seeing her current physician. At that time, she was diagnosed as suffering from depression, post traumatic stress syndrome (in connection with abuse at the hands of one or more of her prior spouses), irritable bowel syndrome and fibromyalgia for which she was again prescribed Trazadone. In May she was switched to amitriptyline but again went on Trazadone after hypoglycemic episodes.

10. In April of 1995, the petitioner referred herself again to Vocational Rehabilitation. Their medical exam showed that her only active illness was hypoglycemia, which was controlled through treatment, although it was noted that she had many different medical issues, including unsubstantiated somatic complaints. It was not clear that she was taken on as a client at that time.

11. The petitioner says that her current problems are weakness in her hands and legs, chest pain, shortness of breath and headaches. She realizes she is depressed and wants to see a mental health counselor but cannot afford one. She cannot do regular housework due to a lack of strength and cannot lift any except light objects due to pain in her hands, arms, and legs. A friend does more difficult household tasks for her.

12. The petitioner gets some pain relief from lying down which she does two to three times per day for one hour each. She does not like taking pain medication due to its addicting quality. She knows she has been prescribed exercise but does not know what specifically she is to do. She does some "mild walking" but she fatigues easily while standing or walking (she tires in as little as 5-10 minutes), and is uncomfortable as well when she sits for a long time. She feels she has no control over her hands and a poor memory which has caused her to stop driving and to give up her artwork. Her writing is illegible. The patient spends her day alternating between doing her light housework in a slow manner, watching TV, reading and resting.

13. Although it has been difficult to objectify the cause of the patient's complaints, her physicians clearly believe she has a complex syndrome, most likely fibromyalgia and depression which causes her considerable pain and fatigue and for which they have attempted treatment, primarily through medication. The patient's testimony as set forth in paragraphs 11 and 12 is found to be credible based both on her demeanor and on the medical evidence showing repeated attempts to receive treatments and rehabilitation.

14. The petitioner's combined impairments, as she credibly describes them, are of a level of severity that has precluded her from performing any substantial gainful activity since at least July of 1994.

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.

As noted above, the medical evidence in this matter establishes that the petitioner met the above definition at least as of July 1994. The Department's decision is reversed.

###