

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,768

)

Appeal of )

)

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-one-year-old man with a ninth grade education and limited literacy skills. He has worked primarily as a farm laborer.

Over the past few years the petitioner has received sporadic medical treatment of a conservative nature (e.g., bedrest and exercise regimens) for back pain. In March, 1995, his treating physician wrote that the petitioner suffers from "chronic lower back syndrome" and that he is unable to do "anything requiring significant lifting, bending or stooping activities". The treating physician went on to say, however, that the petitioner is capable of "sedentary or light work".

In January, 1994, the petitioner underwent a consultative psychological examination to determine his intellectual functioning and mental status. The exam indicated that the petitioner has an I.Q. range of 73 to 79. The examiner concluded with the following "assessment of functional capacity":

[Petitioner] can understand and carry out oral instructions. He can get along adequately with fellow workers and supervisors. He could maintain adequate attendance for low stress job.

[Petitioner's] intellectual functioning is limited and he probably also has limited academic abilities. He may have some problems with attention and concentration and memory which are secondary to his head injuries. However, there is probably no cognitive reason why he cannot work. However, his options for any type of training program will be limited due to his intellectual functioning and probable academic skills.

[Petitioner] is capable of managing his own funds.

To his credit, the petitioner has sought the assistance of Vocational Rehabilitation services, and continues to be an active client of that agency.

Based on the above medical assessments it must be concluded that the petitioner is capable of performing a wide range of unskilled sedentary and light work. Under the regulations (see infra) this precludes a finding that the petitioner is disabled.

#### ORDER

The Department's decision 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.

In this case the petitioner's intellectual limitations do not constitute a "listings-level" impairment under the regulations. See 20 C.F.R. § 404, Subpart P, Appendix I, Section 12.05. The regulations also dictate that an individual of the petitioner's age, even with the petitioner's limited literacy and work experience, is not disabled if, like the petitioner, he can perform a wide range of unskilled sedentary and light work. *Id.*, Appendix II, Rules 201.23 and 202.16. Inasmuch as the Department's decision in this matter is in accord with the pertinent regulations the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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