

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,856

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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 forty-two-year-old woman with a high school diploma. She has worked in a number of unskilled jobs but most recently had been employed as an assembly line worker at a factory where she eventually became a supervisor. She still has that job, but because of her health problems has been forced to cut back to sixteen hours per week (four hours per day/four days per week) and to change the type of jobs she performs. Her present duties have been modified to allow her to "help out" as she can by doing data entry on the computer, phone answering and taping of boxes. She has tried to work more hours but is unable to. She currently earns \$447 per month (\$6.50 per hour) in this occupation.
2. The petitioner has multiple sclerosis and migraine headaches. Her biggest health problem is fatigue relating to her MS. She also has muscle weakness on her right side and some bladder control problems. She takes medications to control her migraine headaches but the medication is expensive and she cannot afford to buy it at present. The petitioner also has had surgery for carpal tunnel syndrome and has diminished fine motor dexterity as a result. She cannot type or do close assembly work any longer. Depression which has accompanied her multiple sclerosis affects her ability to concentrate for long periods of time.
3. On a typical work day the petitioner works from 8 a.m. until noon and then goes home to sleep for one hour. She does some household chores and then goes back to sleep. Her twenty-year-old daughter does most of the household chores. The petitioner takes medication to aid her in sleeping and to keep her from becoming depressed due to the fatigue. The petitioner feels she is gradually getting worse and worse.
4. The petitioner's physician concurs with her assessment of her abilities. He stated over one year ago that she was "certainly partially disabled due to multiple sclerosis and severe fatigue." He has been

treating her for migraine with aura with some success but agrees that without medication it is a severe problem for her. He reported to the Department of Social Welfare in July of 1995, that the petitioner's medical problems were going to cause permanent restrictions and that she could work in the future only as tolerated due to severe fatigue. She is also unable to do any repetitive motions with her hands.

6. The credible evidence indicates that the petitioner is able to do only a very limited range of sedentary work and that she is limited to working no more than sixteen hours per week. No rebuttal evidence was presented by the Department that the petitioner is able to work any more than sixteen hours per week or that she was able to make any more than \$6.50 per hour for her labors. Therefore, it is found that the petitioner can earn no more than \$447 per month from her residual ability to function.

### ORDER

The decision of the Department is reversed.

### REASON

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 petitioner has been limited to a part-time sedentary functional level by a combination of her impairments. Her carpal tunnel syndrome residuals have also severely affected her ability to do a wide range of sedentary work. As she cannot do a full-range of sedentary work, the medical-vocational guidelines used to establish disability are not going to be helpful in evaluating her level of disability. See 20 C.F.R. § 404, Subpart P, Appendix II.

As there is no other evidence on the issue of the petitioner's residual earning capability, an analysis must be made as to whether the petitioner's current employment activity indicates that she can perform both substantial and gainful work as those terms are defined in the regulations. The petitioner does not earn amounts of money which automatically show that she has either engaged in substantial gainful activity (over \$500 per month) or has not engaged in substantial gainful activity (under \$300 per month) under the Social Security guidelines. 20 C.F.R. 415.974(b)(2) and (3). There is no question that the petitioner has the capacity to do "gainful" work because she is paid for her activities. 20 C.F.R. § 416.972. It only remains to determine whether the petitioner's work can be fairly classified as "substantial".

The Social Security regulations define "substantial work activity" as

. . .work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

20 C.F.R. § 416.972

The petitioner's job hours and duties have been significantly eroded by her illness. She now works only forty percent of the time she originally worked. Her duties have been reshaped to accommodate her needs by her employer. It would be unfair under these circumstances to find that the petitioner's effort to hang on to her employment by "helping out" at work--acquiesced in by her long-term employer--indicates a capacity for significant work activity which could be easily transferred to another employer. Therefore, it cannot be found that the petitioner's work activity shows that she can engage in "substantial" activity as that term is defined in the regulations and, therefore, she must be found to be under a disability. 20 C.F.R. § 416.971.

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