

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,171

)

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. At the time of her application, the petitioner was a fifty-nine year old woman who had completed high school and one year of secretarial school.<sup>(1)</sup> During the last fifteen years she has worked as a telemarketer, a secretary and a data entry clerk. Those jobs were each performed primarily in a seated position and required lifting of less than ten pounds. The petitioner is able to operate both a computer and typewriter. She last worked in November of 1994, putting data into computers from two to four hours per day. She was given flexible hours and other accommodations by her employer based upon her health needs.
2. The petitioner claims disability primarily based on osteoarthritis and pain in all her large joints, particularly the lower part of the right sacroiliac joint in her back where she has a "pinched nerve". She weighs 240 pounds and is 5'3" tall and carries a diagnosis of obesity. In addition she has diabetes and hypertension which are currently well-controlled on medication.
3. X-rays confirm that the petitioner has degenerative disease of the lumbar spine and degenerative arthritic changes in her pelvis. Her physicians have attempted to treat her with various therapies and medications to no avail. An orthopaedic surgeon who treated the petitioner described her arthritis as very significant. The petitioner's general treating physician has stated that her problem restricts her ability to do sedentary work (mostly sitting with some walking and standing and lifting of no more than ten pounds at a time) for no more than four hours per day. The physician who treats her for her arthritic condition says that the petitioner is:

quite limited in the type of work that she can do. That is, she should not do any frequent change in position or carrying of anything heavier than five or ten pounds and only occasionally in my opinion. She certainly could sit if she is allowed to get up once in a while and stretch and use fine hand and

finger manipulation to do something, probably typing would not bother her if she had that skill, for example, or computer operator.

4. The credible medical evidence indicates that the petitioner experiences pain in all her large joints, back, both hips, knees and shoulders and particularly on the right side of her sciatic nerve. The pain occurs on a constant basis and is somewhat deadened, but not erased, by medication. Because of this pain, the petitioner is unable to stand or walk for more than five minutes at a time or to sit at a typewriter or computer for more than fifteen minutes at a time. She is unable to perform any activity for more than four hours per day. She is also unable to squat, climb stairs, reach or bend. Pain and exhaustion require her to sleep almost six hours during the daytime.

#### ORDER

The decision of the Department is reversed.

#### REASONS

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 a history of skilled sedentary work. However, the medical evidence shows that the petitioner is not now able to perform a full range of sedentary work which would require her to sit for considerable periods of time during the day, up to a total of six hours or more. See 20 C.F.R. § 416.967. The Department put on no evidence that the petitioner could be substantially gainfully employed for the number of hours, four or less per day, that she might be able to work.

The "Listings of Impairments" directs that a person who is the petitioner's height but who weighs 250 pounds (ten more than the petitioner) and who also has a "history of pain and limitation of motion in any weight bearing joint or spine associated with X-ray evidence" is automatically disabled. 20 C.F.R. § 404, Subpart P, Appendix 1, Rule 10.10 (A.) Given that ruling, it is unlikely that there is any evidence which the Department could put on which would indicate that this woman who was fifty-nine years old at the time of application and very close to meeting the listings of automatically disabling impairments is capable of substantial gainful activity. Therefore, the Department's decision is reversed.

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1. The petitioner turned sixty a few days after her appeal hearing and is now eligible for Medicaid on the basis of her age. The issue for this hearing is whether the petitioner should be found eligible for Medicaid retroactive to her date of application in October of 1995.