

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,460

)

Appeal of)

)

INTRODUCTION

The petitioner appeals a 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

1. The petitioner is a forty-four-year-old man who left school in the 10th grade. During the last fifteen years he has worked primarily in the printing industry as a die cutter, a type of employment which required him to be on his feet all day and lift 25 to 50 pounds at a time. He last worked in October of 1994.
2. The petitioner claims that he has been disabled since December of 1995 due to headaches, blackouts, nervous tremors and depression. He has had extensive neurological testing for seizures and other brain disorders which have been negative, except for a finding that he is experiencing some dimming in the vision in his left eye. His neurologist has observed that he is jittery and nervous, sometimes staggers and that his eyes roll back in his head. However, he notes that he is still able to converse and function through these afflictions. He has prescribed Cataflan for the headaches. He notes that

[Petitioner's] complaints are very serious, in that he seems to be describing focal seizures and perhaps even generalized seizures. However, clinically my feeling is that this has something to do with his psyche and or some sort of drug reaction.
3. The petitioner has been treated at a mental health agency since September of 1995. Records from that agency indicate that the petitioner is a person of average intelligence without psychotic features who was depressed following the death of his young daughter and his divorce but was successfully treated for a time with Prozac. He also has a history of alcohol and drug abuse which he denies is a problem for him at present. He was diagnosed in September of 1995 as having a recurrent major depressive disorder of some severity and was again prescribed Prozac. A follow up note in June of 1996, indicated that the

petitioner continues to experience a depressed mood and a constricted affect. It is also reported that the petitioner continues to be questioned about possible substance abuse but becomes annoyed at the suggestion. In spite of these problems, his mental health provider stated that he

is able to work on an "odd jobs crew", doing well with simple landscaping, moving, helping with cooking, etc.

4. DDS, after reviewing this medical information, concluded that he had no physical restrictions but could not do his former job due to his inability to follow detailed instructions, to concentrate on difficult matters, and to adapt easily to changes in the work situation. However, it was found that he could follow simple instructions and do uncomplicated kinds of work.

5. The petitioner has about two "seizures" a week which last one to one and a half minutes and has constant headaches for which he takes Cataflan. His major problem is depression which causes him, by his own description, to get nervous and uptight and to become easily upset as well as to lose sleep. He has a girlfriend who he "hangs out with" at home most of the time. He does his own shopping, cooking and laundry but rarely goes anywhere or does anything primarily due to a lack of money. He has been looking for a job for two years and currently works three hours per week stocking shelves at a supermarket, a job he got through the mental health agency. He does feel confined and shut-in while working at the store. He has not tried to get more hours there.

6. Based on the above evidence, it must be concluded that the petitioner has no physical limitations and has non-exertional impairments which do not significantly affect his ability to perform work available in the national economy. He is capable of performing a wide range of jobs, such as cleaner, shelf stocker, mover and landscaper, which do not require intense concentration or that he responds to complex and detailed instructions.

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 petitioner cannot return to his former job so the burden shifts to the Department to show that there are other jobs which he can perform in the economy. The petitioner's own testimony regarding his work abilities, as well as the expert opinion of his mental health workers, does not support a finding that he has a severe impairment which keeps him from performing any other substantial gainful activity which exists in the national economy. Without such a finding, the petitioner cannot be found to have met the

criteria for Medicaid eligibility. Thus, the decision of the Department must be upheld.

#