

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,643

)

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 thirty-six-year-old woman who has completed high school and one year of college. She has only worked sporadically in the past and has no relevant work experience.
2. The petitioner has been treated for post traumatic stress disorder based on abuse in childhood for a number of years during which time she has been raising four of her own children as a single mother. Following the birth of her youngest child in March of 1996, and the revelation that her older daughter had been sexually abused, the petitioner suffered a psychotic break marked by severe mania for which she was hospitalized from May 30 through July 9 of that year.
3. The petitioner was diagnosed during this hospitalization as having bipolar illness (manic-depressive disorder) and was prescribed medication which was expected by the doctors who treated her at the hospital to stabilize her condition within three to six months. The petitioner tried the mood stabilizing medications but soon stopped taking them because they made her nauseous. Nevertheless, her manic condition has stabilized and she has been able to function to some degree with psychiatric support. She has negotiated with her current treating psychiatrist to resume the medications only if she should become actively psychotic.
4. During her 1996 psychotic break, SRS took custody of the petitioner's four children and placed them with relatives or in other foster care. Her four year old child was returned to her after a few months and with the support and encouragement of SRS and her counselors, she began taking accounting courses at a local college with a view towards becoming self-supporting. During the Fall 1996 and Spring 1997 semesters she took and successfully completed a full course load at the college. Doing so took more than eight hours per day of class attendance and studying.
5. The petitioner has recovered from some of the acute symptoms of mania which she experienced last

summer but since August of 1996, has continued to be treated by a psychiatrist for post traumatic stress disorder. The opinion of her current treating physician, which is given great weight herein, is that the petitioner experiences recurrent and intrusive recollections of a traumatic experience--- sexual abuse as a child and the discovery of the sexual abuse of her own daughter last year---which are a source of marked distress for her in that they cause her difficulty in maintaining a "stable self concept" and "trustful relationships" with others. Her psychotic break and hospitalization last year were related to this underlying disorder which continues to interfere with the petitioner's ability to carry on normal daily activities and with her ability to interact appropriately and cooperate with others (such as supervisors and co-workers) to a marked degree. She has retained an ability to concentrate on completing tasks which has enabled her to successfully finish her college courses. However, it is the opinion of her psychiatrist in a letter and questionnaire dated October 7, 1996 and April 17, 1997, respectively, that her mental disorder and its symptoms would still prevent her from taking a "job in the conventional economy which required her to work on a daily basis, 5 days per week, to maintain regular attendance, and to interact successfully with co-workers" at least until October of 1997. She also supported the petitioner's decision to limit her intake of psychoactive drugs as a reasonable one in light of both the therapeutic and adverse effects of the medication. The opinion of this physician, who has been treating her for almost a year, is deemed to be the most accurate description of her condition since the time she was released from the hospital until the present and is adopted as a factual finding herein.

### 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 Department does not dispute that the petitioner had a severe affective disorder (bipolar illness) which prevented her from working for up to six months following her July, 1996, release from the hospital. The issue for this appeal is whether or not the petitioner continued to have a mental disorder which prevented her from working for up to a year following the May, 1996, onset of her severe mental illness.

The evidence is clear that the petitioner did continue to have a mental disorder which met or equaled in severity those illnesses listed as disabling in the Social Security regulations under "anxiety related disorders":

#### 12.06 Anxiety Related Disorders

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual

attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied . . .

A. Medically documented findings of at least one of the following:

. . .

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning;

. . .

20 C.F.R., 404 Subpart P, Appendix 1

The petitioner's treating physician has confirmed that after her initial psychotic break cleared, she met the minimum requirements in the listing above for anxiety disorders, has continued to meet them throughout the past year and will likely continue to meet them until this Fall. As she has shown that she has an impairment which continues to meet the requirements for disabling anxiety disorders in the Listing of Impairments, she must be found to be disabled. 20 C.F.R. § 416.911.

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