STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,917

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare finding that he is ineligible for Medicaid benefits based on a failure to prove disability.

FINDINGS OF FACT

1. The petitioner is a thirty-eight-year-old man who has a high school diploma and a year of college education. He has had past work experience as a cable system installer and most recently as a home health aide companion.

2. The petitioner has not held any substantial employment since he was hospitalized in December of 1992, for a major depressive episode and was diagnosed as suffering from a psychotic illness, bipolar disorder. He was treated with anti-depressants and mood stabilizers over the next few years but has had many adverse reactions to these drugs. He was re-hospitalized for depression in the summer of 1993. He has been prescribed Lithium which requires blood monitoring but he has not had the money to pay for that medication.

3. The petitioner has been in counseling for several years for his depression and the alcohol abuse which accompanies it. His therapy records show that he uses alcohol to cover the underlying depressive disorder and to induce a manic state. He has controlled his use of alcohol to varying degrees over the years but is still somewhat dependent on it to mask the symptoms of his disease. The accuracy of this diagnosis has been questioned over the years but no alternative, definitive label has been placed on his condition other than bipolar illness. He has consistently presented over the last four years with symptoms of despondency, lack of motivation, and hopelessness.

4. The petitioner is currently in treatment with a therapist and a psychiatrist for his affective disorder and substance addiction disorder. They both agree that the petitioner has depressive symptoms which include anhedonia, sleep disturbance, psychomotor retardation, decreased energy, feelings of guilt, and suicidal thoughts. In addition the psychiatrist has observed an appetite disturbance and difficulty concentrating. They also agree that his manic swings are marked by hyperactivity, flight of ideas, inflated self-esteem, decreased need for sleep and involvement in activities that have a high probability

of painful consequences which are not recognized at the time. His counselor has also noted pressured speech and his psychiatrist, easy distractibility. They also agree that the petitioner has bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndrome.

5. The petitioner's therapist concluded that the petitioner had a moderate to marked degree of limitation in his daily activities and social functioning and that he often or frequently was unable to concentrate and complete tasks. She also noted that he has had repeated episodes of deterioration in work or work-like settings which have caused him to withdraw or experience a worsening of the behaviors. She concluded:

I have known [petitioner] on and off 4 years. My observations are that functioning has deteriorated significantly over this time period, consistent with untreated bipolar disorder. Without medication intervention my belief is that he will have significant work related limitations--a pattern already established. Depecote, the prescribed medication is out of financial reach of claimant's ability. Thus caught in Catch-22. With medication it is possible he may be able to function in employment; this is yet to be determined with a trial of medication.

6. The petitioner's treating psychiatrist had a

similar but more detailed observation with regard to the petitioner's functional limitations and prognosis:

Moving on to impairment severity, I would indicate that when the patient is ill, which is frequently, he has a marked restriction of activities of daily living. . . . He has marked difficulty in maintaining social functioning, he has frequent deficiencies of concentration, persistence or pace, resulting in failure to complete tasks in a timely manner. He has episodes of deterioration or decompensation which would cause the individual to withdraw from the situation or to experience exacerbation of signs and symptoms and I would say that that is repeated three or more times where that has occurred.

Summary Conclusion: When the patient is ill, he has markedly limited ability to remember locations and procedures when he is severely manic or depressed that would be markedly limited. His ability to understand and remember short and simple instructions when he is severely depressed or manic would be markedly limited . . . his ability to understand and remember detailed instructions would be markedly limited.

B. Sustained concentration and persistence. The ability to carry out very short and simple instructions would again be markedly limited during a phase of mania or depression and again he shifts his moods frequently. He would have marked limitations in the ability to carry out detailed instructions, the ability to maintain attention and concentration for extended periods and the ability to perform activities within a schedule, maintain regular attendance and be punctual would be markedly limited. The ability to sustain an ordinary routine would be markedly limited. The ability to work in coordination with or proximity to others without being distracted by them would be markedly limited during a phase of mania or depression, and that ability to make simple work related decisions again would be severely limited by mania or depression. Since manic depressive illness is not a disease that can be looked at one moment in time, but is assessed over time. (Sic.) At times, the patient may have severe depression, at times the patient has severe mania, at times there may be hypomania so that an evaluation any one moment in time would not be fully valid . . . the patient's work capacities would be severely impaired during periods of mania and depression which are quite frequent for this man. I see significant work related

limitations until his illness is in better control. He has been suffering from this bipolar illness now for approximately 7 years. My hope is that in the future he will get better control of the illness and will be able to be productive as many people with bipolar disorder and good treatment are. The course varies from patient to patient, so I can't make an absolute prediction, but I am hopeful that if this patient can get the appropriate medication and support for purchasing that medication, he may in fact improve.

7. The reports of the therapist and treating psychiatrist are found to be substantially consistent and are adopted as facts in this matter. It is further found that the patient's illness has lasted at least twelve months and is likely to continue unless he is able to obtain treatment. Finally, it is found that the patient is disabled primarily due to bipolar illness and that his alcoholism is secondary to that illness. Although his drinking may contribute to his disfunction, the evidence indicates he would have a severe degree of dysfunction from the bipolar illness alone.

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 evidence is clear that the petitioner has a mental disorder which meets or equals in severity those illnesses listed as disabling in the Social Security regulations under "affective disorders":

12.04 Affective Disorders:

Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

b. Pressure of speech; or

c. Flight of ideas; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked restriction in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

20 C.F.R. § 404. Subpart P, App. 1

The petitioner's treating physician and therapist have confirmed that he has met the listing above for affective disorders for at least a year and will likely continue to meet it until he receives adequate treatment. As the petitioner has shown that he has an impairment which continues to meet requirements in the Listing of Impairments, he must be found to be disabled. 20 C.F.R. § 416.911.

The petitioner should be aware that the Medicaid regulations do require him to follow prescribed medical treatment for his bipolar illness unless he has good cause not to do so in order to receive continuing benefits. 20 C.F.R. 416.930. He is encouraged to seek and follow treatment as it appears that doing so may enable him to return to a relatively high level of functioning.

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