

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,684
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Appeal of)
)

INTRODUCTION

The petitioner appeals the 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 thirty-six-year-old man with a high school education. He has a medical history of Bipolar Disorder and substance abuse. He has held sporadic jobs, the most recent as a pizza delivery man, which ended in Spring, 1998, when he was living in the Seattle area.

2. The petitioner has not worked since he was hospitalized in late Spring, 1998, for "major depression" and suicidal ideation. Following his discharge he moved to Vermont, where he was referred by Vocational Rehabilitation Services to his community mental health agency.

3. In a report to DDS dated July 16, 1998, the community mental health service's Community Rehabilitation and Treatment Coordinator noted the petitioner's diagnosis as "mixed Bipolar Disorder and chemical dependency problems" and provided the following comments:

(Petitioner's) current treatment consists of

chemotherapy, specialized rehabilitation, case management, and supported employment services. He is also homeless and we are attempting to find him housing.

While (petitioner) has demonstrated an inability to hold a job in the past, which may be due to a persistent psychiatric problem, I cannot give a professional opinion regarding his current ability to work based on the short time I spent with him.

4. On a General Assistance form dated September 1, 1998, the petitioner's treating physician at the community mental health agency stated that the petitioner would be disabled from all work and training for an "estimate" of three months.

5. Apparently, this estimate was overly optimistic. In an updated report dated March 10, 1999, solicited by the hearing officer pursuant to this appeal, the petitioner's treating physician checked that the petitioner was "limited" in the following areas: understanding, remembering, and carrying out both complicated and detailed but uncomplicated job instructions¹; interacting with supervisors and coworkers; dealing with the public; and maintaining concentration and attention. In the narrative sections of the report, the physician expanded on the above as follows:

(Petitioner) exhibits persistent difficulties with mood lability, anxiety, irritability, temper dyscontrol, impulsivity, limited attention span. These symptoms apparently do impair his ability to interact appropriately with others and would impair his ability to carry out instructions if he was employed. He has

¹It was noted that the petitioner could follow "simple one-or-two-step instructions".

exhibited significant difficulty with his studies at Community College of Vt.

His symptoms are described above. Ongoing psychiatric assessment has indicated a likely diagnosis of attention deficit hyperactivity disorder. He has also been diagnosed with bipolar disorder and continues to report disturbance of mood. His score (70) on the Wechsler Utah rating scale for adult ADHD was significantly elevated.

His past history and current symptomology suggest a current lack of capacity to maintain gainful employment.

5. The above assessments are uncontroverted by any other evidence in the record. On the basis of these ongoing assessments it is found that the petitioner is currently unable to engage in any substantial gainful activity, and that his disability has been, or will be for a duration of at least twelve consecutive months.

ORDER

The decision of the Department is reversed.

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.

Based on the uncontroverted assessment of the petitioner's treating physician it is concluded that the petitioner has impairments due to psychiatric problems that are severe enough to have kept him from performing any type of gainful employment for the requisite twelve month period.

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