

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 17,175  
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Appeal of )  
 )

INTRODUCTION

The petitioner appeals the decision of the Department PATH denying her application for Medicaid. The issue is whether the petitioner meets the definition of disabled according to the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-nine-year-old woman with an eleventh-grade education whose most recent work experience was unskilled factory labor in 1980.
2. The petitioner alleges disability based on arthritis in her arms, back, and feet. She is 5 feet 3 inches tall and weighs 253 pounds.
3. A consultative examination of the petitioner in April 2001 noted her obesity and "some limitation of motion in her shoulders". However, it was also noted: "The objective support of a severe disabling illness at this time are (sic) minimal."
4. In March 2001 the petitioner began seeing a doctor for her various ailments. In several reports that physician has noted minimal physical findings and the petitioner's

expressed reluctance to work, but she has consistently deferred an analysis as to the petitioner's disability to doctors specializing in such assessments.

5. The petitioner underwent various lab work and tests in April 2001. X-rays done of her back at that time showed evidence of some "degenerative changes mid to lower lumbar spine in addition to changes of degenerative disc disease, most prominent at L4-L5 level. . ." Foot x-rays revealed: "Focal calcific tendonitis and erosive change at the medial aspect of the head of the proximal phalanx of the little toe and Achilles tendon spur."

6. In September 2001 the petitioner underwent a complete "functional capacity evaluation" by an occupational therapist and a physical therapist at a hospital clinic. Several significant limitations were noted, including "poor prolonged standing tolerance", "limited ability to kneel", "limited walking ability with poor endurance", and "very limited ability to lift and carry". The report concluded with the following assessment of the petitioner's residual functional capacity according to federal disability criteria: "Considering the physical demands of the Dictionary of Occupational Titles, she barely meets the criteria for the sedentary work which is 'Lifting 10 lbs. Max and occasionally lifting and/or carrying such articles as dockets, ledgers, and small tools'. . ."

7. Based on the above assessment, which is essentially uncontroverted, it is found that the petitioner is limited to, at most, "sedentary work" as it is defined in the pertinent regulations.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

The disability of an individual age 18 or older is defined as 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 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.

Under the Social Security regulations governing disability determinations, an individual of advanced age (over 55<sup>1</sup>), with no relevant work history (no work within the last 15 years<sup>2</sup>), and less than a high school education<sup>3</sup> is disabled if she is limited to "medium work" or less. 20 C.F.R. § 404,

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<sup>1</sup> See 20 C.F.R. § 416.963(d).

<sup>2</sup> See Id. § 416.965(a).

Subpart P, Appendix II, Rule 203.10. Medium work is defined as ". . . lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds." 20 C.F.R. 416.967(b).

As noted above the petitioner's residual functional capacity is well below the above definition. She can barely lift 10 pounds and she can't do prolonged walking or standing. Her limitations are far more severe than those, which would disable her under the above rules. As such, she has a condition, which clearly meets the definition of disabled.<sup>4</sup>

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<sup>3</sup> See Id. § 416.9964(b).

<sup>4</sup> It is puzzling, and somewhat perplexing, that the Department could not see its way to settle this case, especially once it received the functional capacity assessment of the petitioner. In light of the petitioner's age, education, and work experience, in order to be found "not disabled" under the regulations, she would have to be capable of performing "heavy work", which entails being on one's feet all day lifting up to 100 pounds at a time and frequently lifting or carrying objects weighing 50 pounds. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 203.14. Even with the most jaundiced view of the evidence, such a finding would be entirely unsupportable.