

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,497
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) finding that she was not eligible for RUFA benefits due to a high risk pregnancy.

FINDINGS OF FACT

1. The petitioner is a twenty-one-year-old woman with no children who moved to Vermont from West Virginia in August of last year. She has a GED (high school graduate equivalency diploma) and had worked as a certified nursing assistant before moving to this state. On October 5, 2001, at a time when the petitioner was almost five months pregnant, she came into the PATH office to find out what benefits she might be eligible for.

2. On that day an application for Food Stamps and VHAP assistance was taken. The petitioner understood the eligibility specialist to say that without any children she would not be eligible for RUFA benefits until 60-days before

the baby was born. Based on that information she did not ask for RUFA benefits. During a subsequent discussion with the worker's supervisor, the petitioner was told that she might be eligible for RUFA benefits up to ninety days before her child was born.

3. The petitioner reapplied for benefits on December 3, 2002. At that time, she was living in a motel with her boyfriend and was expecting the baby to arrive around February 14, 2002. In order to determine her eligibility, the Department sent a questionnaire to her physician asking questions about the petitioner's health and her abilities to do work.

4. The questionnaire returned by her physician indicated that the petitioner was experiencing back pain and had been advised to use heat, to rest and to take Tylenol for that malady. Otherwise, her prenatal care was listed as "routine". Her physician said that due to her pregnancy and backache she was restricted with regard to lifting to a maximum of ten pounds. He felt she could sit for up to eight hours per day and stand or walk for up to five hours per day. She had no mental problems and her prognosis was good.

5. The Department considered this information and determined that there was not sufficient evidence to conclude

that the petitioner suffered from a high-risk pregnancy that precluded her from doing any work. She was denied RUFA benefits at that time.

6. The petitioner reapplied on January 18, 2002. At that time she was found eligible for RUFA benefits based on the fact that her child was expected to be born within thirty days.

7. The petitioner appealed the denial of benefits from November 15, 2001 to January 15, 2002 saying that she was unable to work. She reported that she spent most of that time in her residences (she lived with several friends during this time) and left only to attend to necessary duties such as grocery shopping for a couple of hours at a time. She stayed off her feet as much as possible and elevated her feet and legs. She had a miscarriage a couple of years before at nine weeks and felt it was prudent to take it easy. She had one experience where she went to the emergency room of the hospital after a hard kick from the baby caused her bladder to discharge. She was told that the baby was in the breech position. Her inactivity during this time was confirmed by the aunt of the petitioner's boyfriend who saw her every day.

8. The petitioner's testimony that she ceased all but necessary activity is found to be credible. However, it

cannot be found based on the physician's report that he prescribed total inactivity to deal with her backaches. The petitioner was given ample opportunity after the hearing to provide clarification from her physician that he considered hers a high-risk pregnancy which would have prevented working at any job. However, the petitioner did not provide further documentation.

ORDER

The decision of the Department is affirmed.

REASONS

RUFA regulations allow an adult woman without children to obtain benefits if she is pregnant and the "delivery date falls within the next 30 days" and the child would be eligible for Reach Up. W.A.M. 2242(2). The regulations further allow a pregnant woman who is "unable to work due to a high-risk pregnancy" to receive benefits if her "expected delivery date falls within the three-month period following the month of application". W.A.M. 2242(3)(b). That regulation is detailed with regard to how the determination of "unable to work" is made:

. . .

The ability to work of all other pregnant women having no children in their household who seek ANFC [now RUFA] benefits before the 30th day immediately preceding the pregnant woman's expected delivery date . . . shall be determined on the basis of a case-by-case assessment of the medical conditions present, to what degree those conditions are controlled or modified by treatment, and other relevant medical factors.

This determination shall be made by the commissioner or his or her designee on the basis of medical evidence provided by the woman's obstetrician, nurse-midwife, or by other qualified medical professionals (as determined by the commissioner or his or her designee) and obtained by the pregnant woman, and additional medical data when deemed necessary by the commissioner or his or her designee, which he or she shall obtain from the treating obstetrician, nurse-midwife, or other qualified medical professional, or on a consultative basis.

. . .

The determination of a pregnant woman's ability to work shall be based on whether she can perform any substantial gainful activity which exists in the local or adjacent labor markets and shall not be limited to a determination of whether she is able to perform work in which she is currently or has been previously engaged. Non-medical factors, including but not limited to previous employment history, current employment status and availability of alternative sources of income support, and health-related factors such as a pattern of substance abuse on the part of the pregnant woman, or other high-risk behaviors on her part, shall not be the basis of a determination that

a pregnant woman is unable to work due to a high-risk pregnancy.

. . .

W.A.M. 2242(3)(b)

The Department decided that the petitioner's limitations were not significant enough to keep her from performing all substantial gainful activity available in the local labor market. It should be noted that under the Social Security regulations, which use language very similar to that found in this regulation, a person who can only do light work (the category of work described by this physician), and who is young is considered capable of substantial gainful activity even if she is unskilled and illiterate or incapable of communicating in English. See. 20 CFR, Subpart P, Appendix 1 Rule 202.00. This petitioner has some nursing assistant skills as well as a high school diploma. It was not unreasonable for the Department to conclude that she could engage in some substantial gainful activity during her seventh and eighth months of pregnancy.

The petitioner had the opportunity to show that this assessment was wrong by obtaining information from her physician stating that he had indeed ordered her to bed rest and had restricted her from employment during the time at

issue. The petitioner did not present such supporting evidence. It must be determined, therefore, that the Department was correct in concluding that the petitioner did not qualify for extended prenatal benefits based on a high-risk pregnancy. As the Department's decision is consistent with its regulations, it must be upheld by the Board.

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