

3. The petitioner alleges that she has been unable to work for several years due to severe pain in many parts of her body. The petitioner's treating physician has diagnosed her with hypertension, depression, fibromyalgia, COPD, and "sewer gas poisoning".

4. The medical evidence consists mainly of various reports and statements submitted by her treating physician. In a brief note dated March 19, 2003 he stated: "My patient has been medically disabled since 1995. I expect that she will continue this way and never return to working." On a General assistance form dated June 17, 2003 he checked that the petitioner could not work at any job or training and that he expected her problems to last beyond July 2004.

5. The most detailed comments from the petitioner's treating physician are contained in "residual functional capacity questionnaire" he completed on September 3, 2004. He noted that the petitioner was not a "malingerer", and that her pain was severe and affected virtually all parts of her body. He stated that she could not tolerate even "low stress" jobs, and that she would be physically limited to no lifting and only a few minutes of continuous standing and walking totaling less than two hours in a workday. Though

not fully legible, he noted that the petitioner has suffered these limitations for either seven or nine years.

6. The only other significant evidence in the record is a psychological consultative exam performed on November 15, 2001. The examiner summarized his findings as follows: "She is eccentric and may have some character issues but they probably would not appear disabling. Her primary disabling conditions would appear to be in the physical realm if they are so confirmed medically."

7. Although determining the etiology of her condition may well be problematic, nothing in the medical evidence suggests that the petitioner does not legitimately experience and suffer from the limitations she and her doctor describe. The petitioner has appeared before the Board many times, the last several times in a wheelchair. She is easily distressed. Although no specific findings can legitimately be based on such observations, it can be noted that nothing in the petitioner's appearance and demeanor casts any reasonable doubt on her allegations.

ORDER

The Department's decision is reversed.

REASONS

The Medicaid regulations at W.A.M. § M211.2 defined disability as follows:

Individuals age 18 or older are considered disabled if they are unable to engage in any substantial gainful activity because of any medically determinable physical or mental impairment, or combination of impairments, that 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, individuals must have a severe impairment, which makes them unable to do their previous work or any other substantial gainful activity which exists in the national economy. To determine whether individuals are able to do any other work, the disability determination unit considers their residual functional capacity, age, education, and work experience.

The Board has long adhered to the now-axiomatic rule that the opinion of an individual's treating physician as to disability is "controlling" unless rebutted by substantial and specific evidence to the contrary. See *Green-Younger v. Barnhart*, No. 02-6133 (2nd Cir. 7/10/2003). Although most of the above-cited medical evidence in this case was obtained after the Department's denial of the petitioner's application, it is now clear and essentially uncontroverted that the petitioner is totally disabled by pain resulting from fibromyalgia and other physical and psychological problems. Thus, it must be concluded that she meets the

above definition, and has done so from at least the date of her application.

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