

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 17,985
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Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department of Prevention, Assistance, Transition, and Health Access (PATH) terminating his General Assistance benefits because the petitioner has become "able-bodied."

FINDINGS OF FACT

1. The petitioner is a forty-three-year-old man who suffered a clavicle fracture on January 4, 2002 in an accident. Until that time, he had been employed for many years in the ski and restaurant industry in the winter and as a carpenter and painter in the summer. He has two years of education beyond high school. He had no insurance to cover his living expenses although he has VHAP benefits to pay for his health care.

2. On April 12, 2002, the petitioner applied for General Assistance benefits for housing and personal needs from the Department of PATH. At that time he was granted benefits based on a medical certification from his primary

care physician, a nurse practitioner, that he would be unable to work until September 1, 2002. With the petitioner's agreement, the Department obtained a second opinion from an orthopedic specialist who agreed with the petitioner's treating physician.

3. The petitioner received General Assistance benefits for his housing and personal needs through August of 2002. Although he was required to file monthly applications, he was not required to file any new medical evidence. For the past few months, the petitioner had been trying to make some money through the Internet but was unable to do so. He was successful in selling some of his possessions to gain money for his living expenses.

4. At the beginning of September, the petitioner filed a new application for benefits alleging that he was still disabled because his clavicle had not healed properly and that he was scheduled to have corrective surgery on October 2, 2002. That same day, September 3, 2002, PATH sent the petitioner to the orthopedist he had seen in April to obtain verification of his medical situation.

5. The orthopedist supplied PATH with a form which stated that the petitioner was suffering from a non-union left clavicle which would justify exemption from employment at his

usual occupation. He did feel that the petitioner could work at some other occupation which did not involve lifting or repetitive use of the left arm. The physician was not asked to comment on the fact that the petitioner had surgery scheduled within the month as it might pertain to his ability to seek work.

6. The petitioner was not told that he could obtain information from his own treating physician in support of his application. He was denied further General Assistance benefits based on the consultant's medical opinion which was interpreted by PATH as showing that the petitioner is "able-bodied."

7. On September 6, 2002, the petitioner requested an expedited fair hearing which was held on September 9, 2002. At that time, the petitioner testified credibly that his collarbone had not healed, that he was in considerable pain and that he had had a difficult time finding a surgeon willing to operate on him but that he was having the surgery within the month. He expected that after the surgery he would be completely incapacitated for some months. He felt that his physician would have backed him up with regard to his condition if she had been asked.

8. The petitioner was advised at the hearing that he could provide a written statement from his treating physician supporting his claim of disability. He was given two weeks to submit that information to PATH. PATH was directed to review this information to see if it supported his claim that he was unable to work. If PATH determined that the petitioner's claim was not supported, it was to forward the new evidence and the review decision to the hearing officer to become part of the evidence in this matter. PATH agreed to do so.

9. The petitioner submitted a packet of information to the PATH office on September 16, 2002 including a medical form filled out by his physician and a medical journal article describing the problems associated with a "non-union of the fractured clavicle."

10. The treating physician's letter dated September 9, 2002 stated that the petitioner has an injury which would keep him from employment requirements. The physician stated further that the petitioner has "had to wait for surgical options", that he was on the schedule for October and that he would not be able to work in other types of employment because he would undergo surgery in the near future. She expected the rehabilitation from the surgery to last four more months.

11. The journal article which accompanied the letter stated that non-union clavicle fractures can cause "significant disability due to pain, paresthesia, extremity weakness from neurovascular entrapment, shoulder weakness from disturbed shoulder mechanics, crepitation at the fracture site and unacceptable cosmetic appearance." The articles stated that surgery is the recommended treatment for symptomatic patients.

12. PATH reviewed this evidence and notified the petitioner that it still considered him "able-bodied" based on the orthopedist's letter. He was found ineligible for continued General Assistance benefits. The petitioner responded to this denial with a letter protesting that he was cut off benefits before he had a right to due process and that he would like the Department to get a "third" opinion with regard to his condition. No response was apparently ever made to this request.

13. None of this information was passed on to the hearing officer as was required. On October 8, 2002, the hearing officer wrote to the parties asking if additional information had been submitted and, if so, to provide it immediately. The petitioner responded on October 12 that he

had provided the information over three weeks ago to the District Director.

14. After some prodding, PATH finally forwarded the new medical report and the journal article to the hearing officer on November 4, 2002 as well as two letters from the petitioner. The first dated September 16 was a cover letter that accompanied the medical evidence. The second dated September 17 was a letter protesting the new denial and seeking immediate relief through the appeals process. The Department's cover letter dated November 4, 2002, stated that the petitioner was still considered "able-bodied" and capable of employment because the orthopedic surgeon's letter was found to be more credible and because the petitioner had gone to college. He was invited to reapply when he had his surgery if he became disabled again. No explanation was offered for the six-week delay in forwarding these materials.

15. Based on the above information, it is found that the treating physician's opinion that the petitioner was unable to do any work at present due to the continued seriousness of his situation and his impending surgery is credible. The consultant's opinion is given less weight both because he has not continued to treat the petitioner and because he did not

discuss the effect of the scheduled surgery on his ability to seek work.

ORDER

The decision of PATH is reversed.

REASONS

A person without dependents who is under fifty-five years of age, who has more than an eighth grade education and who has been working regularly, can only receive general assistance benefits to meet emergency needs¹ if he or she is not "able-bodied." W.A.M. 2600 (B). "Able-bodied" is defined in the regulations as follows:

No physical or mental impairment exists which prevents the person from working. A person shall not be considered able-bodied if currently unable to work in any type of employment due to physical or emotional problems that have lasted or presumably will last at least 30 days. This eligibility factor must be verified by a signed statement from a physician or licensed practitioner whose services would be covered under Medicaid were the GA applicant a Medicaid recipient. The Department shall pay the reasonable expense of required medical examinations but may require, and pay for a second opinion.

W.A.M. § 2601

¹ There are other requirements in the regulations if the applicant is facing a "catastrophic" situation. See W.A.M. 2602.

Determinations of eligibility for General Assistance require assessment of income available in the prior thirty days and thus require a new application every thirty days. W.A.M. § 2600C. When the reason for eligibility is a medical one, the above regulation contemplates that the Department would pay the expense of a medical examination and statement. Common sense dictates that the medical examination and statement would initially come from a health care professional treating the applicant. If the Department wishes, it may then obtain a second opinion from another physician.

In this matter, no statement from the treating physician was asked for or obtained by PATH prior to its denial of the petitioner's request. Instead, PATH obtained and made its determination based solely on the opinion of a physician who was not treating the petitioner. This process was unfair to him and an attempt was made to remedy that unfairness at the hearing by allowing the petitioner to timely submit such a statement from his physician and obtain a new review. Because of the emergency nature of the situation, it was expected that a new decision would be issued forthwith which could then be reviewed by the Board at its October meeting.

The new evidence was submitted within a week of the hearing and apparently a new decision was made at once but

that decision was not communicated to the Board for six weeks. That was also unfair to the petitioner who was deserving of a prompt decision and review of his appeal for his emergency needs. The only relief the petitioner can get now is retroactive relief which is a poor substitute for timely action. Nevertheless, as indicated in the findings of fact, the petitioner and his treating physician made a convincing case that he continued to be disabled and, as such, he was entitled to receive relief based on his September 2002 application. Since the credible evidence supported the petitioner's continuing disability, PATH's decision to the contrary must be reversed.

If the petitioner is still in need of further assistance, he is urged to reapply immediately at the PATH office. The petitioner should also be aware that he may be eligible for Social Security disability benefits if his disability is expected to last for one year from the date of injury. PATH may require him to make such an application as a condition for continuing to receive benefits.

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