

3. The medical records clearly document the presence of degenerative disc disease in the petitioner's back, which causes pain and limits her ability to lift, stand, and walk. The only medical opinion directly commenting on her ability to work is a note from her chiropractor from June 2004 that includes the following:

She is unable to work at her normal job, which is landscaping, because of the bending, twisting, and lifting that landscaping involves. She does walk around. She is able to drive a car. There are times when she is not in a lot of pain, especially when she is able to take it easy and modify her activity during the day so that she is not doing a lot of bending and twisting. At this time she is doing well with the chiropractic care in that it is able to keep her relatively comfortable as long as she limits her activities. She is not able to return to her normal work, which is landscaping but she could be tested I think in some different ways to see if she could perform some other kind of work. That would probably be good for her mentally and emotionally because she is still a relatively young woman, but at this time she is not able to return to the work that she is used to doing.

Mentally she appears clear. Her cognitive behavior seems normal. Her hearing and speaking appear normal. Her memory, understanding, social interaction, and adaption (sic) appear normal.

4. Based on the medical evidence, it is found that the petitioner's back problems prevent her from returning to her past work and would preclude any other job that entailed lifting and twisting and prolonged standing and walking. However, it appears from the evidence that the petitioner

would not be precluded from performing a mostly sedentary job.

ORDER

The decision of the Department is affirmed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

The disability of an individual 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, 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, 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.

The regulations define "substantial gainful activity" as work done for pay that involves significant mental and physical activities, even if done part time. W.A.M. § M211.21, 20 C.F.R. § 416.972.

Although the petitioner's past work appears to have involved significant physical demands that she can no longer meet, the medical evidence of her back problems does not

indicate that she would be prevented from performing at least sedentary work. Under the federal regulations a person of the petitioner's age, education, and work experience would be found not disabled even if she were limited to solely sedentary work. 20 C.F.R., Subpart P, Appendix 2, Rule 201.18 et seq.

If the petitioner is able to present any updated medical evidence or opinion that she is unable to perform sedentary work she is free to reapply for Medicaid. Based on the evidence of record at this time, however, it must be concluded that the Department's decision is in accord with the pertinent regulations.² Thus, the Board is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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² The petitioner would be well advised to consult with the Division of Vocational Rehabilitation for an assessment and perhaps training in obtaining a job suitable to her medical limitations.