

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/10-124
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Economic Services Division, denying General Assistance. The issue is whether the petitioner meets the eligibility criteria for General Assistance. An expedited hearing was held on March 11, 2010. This decision is based on the evidence adduced at hearing.

FINDINGS OF FACT

1. The petitioner is a fifty-six-year-old man. Petitioner has a GED. Petitioner receives Food Stamps and medical assistance from the Department.

2. The petitioner lives in a trailer owned by L. StF. His share of the rent is \$500 per month. The trailer is a three-bedroom trailer. The third bedroom was used by a disabled individual prior to his death. Petitioner is behind on his rent, but petitioner is not facing a court-order eviction.

3. Petitioner last worked on January 16, 2010. Petitioner was employed as a caretaker for a disabled individual; this individual died on or about January 16, 2010.

4. Petitioner experiences back pain. He testified that he has a herniated disc, three compressed vertebrae, and a pinched sciatic nerve. Petitioner recently hurt his left shoulder and has limited strength in his left arm and shoulder.

5. On or about March 5 and March 10, 2010, petitioner applied for General Assistance for personal needs and housing.

6. As part of his application, petitioner submitted a Medical Report from Dr. W., his treating doctor, dated March 4, 2010 and a letter from Dr. B. dated March 10, 2010.

7. Dr. W. noted that petitioner had chronic back pain and a recent injury to his left shoulder. He gave an onset date of December 25, 2010 with a three-month duration. Dr. W. was asked whether petitioner could do other work if he was unable to do his past work. Dr. W. wrote that petitioner could do other work provided there was no lifting over 5 pounds and no overhead range of motion.

8. Dr. B. submitted a letter noting that he saw petitioner on March 10, 2010 and that petitioner could return to work on March 15, 2010.

9. Based on the medical information, the Department issued a Notice of Decision dated March 10, 2010 denying General Assistance because petitioner is able-bodied and does not have two employment barriers. Petitioner appeals this decision.

ORDER

The Department's decision is affirmed.

REASONS

The General Assistance program is a safety net program that is available in limited situations. In non-catastrophic situations, an able-bodied person without minor dependents is not eligible for assistance.¹ 33 V.S.A. § 2103(a)(2). An able-bodied person does not include a person who has certain barriers to employment. 33 V.S.A. § 2103(e).

Able-bodied is defined at W.A.M. § 2603(A) as:

"Able-bodied" means no physical or mental impairment exists that prevents the person from working. A person shall not be considered able-bodied if currently unable

¹Catastrophic situations refer to death of a spouse or child, natural disaster, court-ordered eviction, etc. W.A.M. §2621. Petitioner is not facing a catastrophic situation; his eligibility is governed by the regulations for non-catastrophic situations.

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...(emphasis added.)

Petitioner argues that he should not be considered able-bodied due to his physical problems. He cannot return to his past work as a caregiver. He argues that the limitations placed on him by his treating doctor effectively preclude any other work.

The problem with petitioner's argument is that the regulations are based on medical evidence that a person cannot do any other type of work, not whether work is available in the community. Petitioner's doctor wrote that petitioner was able to do other work of a sedentary nature. A second doctor stated petitioner could return to work as of March 15, 2010. The evidence presented does not rise to the level contemplated by the regulations.

In non-catastrophic cases, an able-bodied person may qualify for eligibility if he has two employment barriers. W.A.M. § 2610. Being over age fifty-five is one such barrier. W.A.M. § 2610(A)(2)(a). The evidence did not indicate that other barriers were met. See W.A.M. § 2610(A)(2)(b-e).

If there is a change in petitioner's situation, he can reapply for benefits. However, the evidence supports the Department's decision. The Department's decision is affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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