STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,035
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a thirty-seven-year-old man who has a tenth grade education and relevant experience as a maintenance worker and a taxi driver. His most recent job was as a rental agent and handyman for a large apartment building in which he lived. He left that job in June 1989 due to his health problems. He has not worked since that time.

2. The petitioner was diagnosed some four years ago as being positive for an HIV infection. He did not seek treatment for several years but was tested approximately six-months ago and was found to have a very low blood cell count meaning he is seriously immunosuppressed (CDC-Class II) and vulnerable to an opportunistic infection, although he has not succumbed to such an infection to date. (In the past, he has experienced shingles and hairy leukoplakia.) He is being

treated with AZT and Bactrim as a prophylactic measure. In June, he was examined by a physician who found that he was suffering some fatigue, nausea and headaches, perhaps as a result of the AZT, but was otherwise asymptomatic and who described the petitioner as having a "reasonably O.K." energy level. He did not appear to that doctor to be incapacitated from working on the basis of his infection.

3. Since June of 1989, the petitioner's condition has deteriorated and he now suffers from weight loss, night sweats, disturbed sleeping patterns, increased fatigue and diarrhea. He was interviewed by a physician who has a Master's in Public Health and who specializes in AIDs cases (as well as anesthesiology) who testified at the hearing that the petitioner's recent health records and reports show that he is now actually quite HIV symptomatic, suffers from abnormal sleep patterns and is severely impaired in his general functioning by fatigue and his other symptoms. His run down condition makes him a likely candidate for an opportunistic infection. That physician's opinion is found to be credible as to the petitioner's current physical condition and is adopted as a finding.

4. The petitioner suffers from chronic late stage alcoholism which has been resistant to successful treatment throughout the dozen or more in and out-patient detoxification programs which the petitioner has participated in over the last ten years. His drinking has

led to the loss of his driver's license due to four DWI convictions (a fifth's pending). He has left several jobs, including his last, because alcohol has seriously interfered with his ability to function. The stress of discovering that he most likely will develop AIDs has added to the petitioner's motivation to drink. He was drinking a fifth or more of vodka per day at the time he quit his last job because he was avoiding tenants and others he had to deal with in his work. On September 18, 1990, the petitioner "blacked-out" due to excess alcohol consumption. At that time, he entered an out-patient alcohol counseling program which he has been attending once per week for about two months and has managed to remain sober during that time. Based on the opinions of his alcohol counselor, it is found that his alcohol addiction is severe chronic, has been worsened by his HIV diagnosis, has progressed to a stage where the petitioner has very little ability or motivation to control it, and can be treated, if at all, only through a long-term residential alcohol treatment program.

5. In June of 1990, the petitioner was examined by a resident in psychiatry who did not feel that he suffered from a psychiatric illness which prevented him from performing vocationally related activities. He found that the petitioner suffered from severe alcohol dependence and abuse, a probable personality disorder, and perhaps a dysthynic (low level chronic depression) disorder but was

not experiencing a major depressive episode which required the use of antidepressant medication.

6. Subsequent to this interview and at the encouragement of the psychiatrist, the petitioner began counseling sessions at a local AIDs project in July of 1990. As part of his therapy he meets with a psychologist for two hours every other week and sees the psychologist on an individual basis three to four times per week. That psychologist, who has a Ph.D. in Clinical Psychology and over ten year's experience as a psychotherapist, testified at the hearing that the petitioner appeared to him to be extremely depressed when he saw him in July and had a very flat affect, perhaps as a result of his alcoholism and "AIDS" diagnosis. He described the petitioner as having a restricted life in which he lives in the apartment of a sympathetic friend on whom he is totally dependent for all his needs including food and shelter. He is extremely isolated and only goes out to attend AIDs counseling sessions and to meet with his doctors and lawyers. He appears to have no social contacts other than the friend he lives with (who was a former co-worker) and is fearful of all people. He has observed that over the course of his therapy the petitioner has a decreasing energy level, and does not appear to be eating or sleeping well. The petitioner has no trouble with simple requests or instructions but has difficulty following through with more demanding requests and lacks consistency in his ability to

carry out long term plans. The above limitations described by the petitioner's psychologist are found to be reliable and credible based on that psychologist's training and considerable experience in this area, as well as his intimate knowledge of this petitioner, and are adopted as findings of fact.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

> Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (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 Social Security regulations for determining disability, which are binding in Medicaid determinations, dictate that persons who meet certain criteria in the "Listing of Impairments" must be found to be disabled. 20 C.F.R. ə 416.920(d) The listings include "Substance Addiction Disorders" under the following circumstances:

12.09 SUBSTANCE ADDICTION DISORDERS:

Behavioral change or physical changes associated

with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.
B. Depressive syndrome. Evaluate under 12.04.
C. Anxiety disorders. Evaluate under 12.06.
D. Personality disorders. Evaluate under 12.08.
E. Peripheral neuropathies. Evaluate under 11.14.
F. Liver damage. Evaluate under 5.05.
G. Gastritis. Evaluate under 5.04.
H. Pancreatitis. Evaluate under 5.08.
I. Seizures. Evaluate under 11.02 or 11.03.

12.08 PERSONALITY DISORDERS:

A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

> B. Resulting in three of the following:
>
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Deficiencies of concentration, persistence or pace resulting in frequent failure to compete tasks in a timely manner (in work settings or elsewhere); or
> 4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).
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> 20 C.F.R. ə 404, Subpart P Appendix 1

The evidence above shows that based on his alcoholism and personality disorders, the petitioner meets paragraphs (1), (4), (5) and (6) of Section A and paragraph 1-4 of Section B. It must be determined, therefore, that the patient meets the listings on psychological criteria and is thus disabled. In addition, the petitioner's physical problems, primarily fatigue, make it unlikely that the petitioner could perform jobs even at the sedentary level, which would also eliminate him from being found capable of physical work under the Medical-Vocational Guidelines. 20 C.F.R. ə 404, Subpart P, Appendix 2. It must be concluded that the petitioner has impairments which either singly or in combination prevent him from engaging in any substantial gainful activity.

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