

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,097
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Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her 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 40-year-old woman with a 12th grade education and a certificate as a nurse's aide. She has a recent job history of working as a nurse's aide for more than seven years. As a nurse's aide she bathed, fed, dressed and lifted patients. Her work required her to be on her feet all day and to frequently bend, lift and carry objects. She last worked in this occupation in May of 1989.

2. The petitioner has, as one of her physician's puts it, "an unusual collection of rare diseases." Her medical conditions are as follows:

- (a) Cryoglobulinemia, the presence in the blood of an abnormal protein that forms gels at low temperatures. This is a serious disease which is treated with steroids. The petitioner was initially treated with Prednisone and was weaned off of that medicine in favor of Imuran which is currently controlling her disease very well. The petitioner sometimes exhibits skin rashes, lesions or bruises due to this problem.

- (b) Mild chronic active hepatitis which was originally diagnosed in 1976 but has not progressed since 1982.
- (c) A hypothyroid condition which is well controlled on Synthroid.
- (d) Fibromyalgia or an aching of the muscles in her legs and back for which she takes Doxepin and Motrin for pain relief.

3. The petitioner worked for years with these problems but by May of 1989, she felt she could no longer carry on as a nurse's aide because the constant walking caused cramps in her ankles, knees and joints. She also experienced continual low level pain in her legs and itching from the rashes and lesions and fatigue after a full work day. She has acute flare-ups of the pain a couple of times per month. Although the medications keep her from feeling worse, the petitioner still experiences fatigue and muscle aches on a daily basis. Sitting for prolonged periods of time also causes her legs to cramp but she is somewhat relieved from this by sitting on cushions.

4. The petitioner, who lives alone in a second floor apartment, does all her own shopping, cooking, cleaning and bill paying. She visits relatives in the area but can no longer roller skate, hike, bicycle or fish, all of which activities she enjoyed before. She can take short walks of about fifteen minutes but experiences pain when climbing stairs.

5. The petitioner is currently being treated by a specialist in rheumatology, who has seen her about six

times over the last year. He agrees that the petitioner is unable to work as a nurse's aide due to her restrictions but does not believe she is "totally disabled" and feels she is capable of sedentary work. He stated that the petitioner can occasionally lift or carry 20 lbs., frequently carry or lift 10 lbs., stand or walk with normal breaks for at least two hours in an eight hour work day and sit with normal breaks for a total of six hours in an eight hour work day. He states further that she is unlimited with regard to pushing or pulling, but is frequently limited with regard to balancing, stooping or kneeling, and occasionally limited with regard to climbing, crouching or crawling. The only other limitations he places on her is avoiding even moderate exposure to extreme cold. He characterized her muscle pain as chronic but slight in severity. It is his opinion that allegations of symptoms made by the petitioner are disproportionate to the expected severity of the combination of her impairments. He states that the "patient has serious diseases, but limitations should not totally disable, only limit function.

6. Another physician, a general practitioner, who had treated the petitioner for years but not during the past year, concluded that the petitioner had the same exertional limitations but opined that she must also alternate sitting and standing to relieve pain or discomfort and was limited in her ability to push and pull with her upper and lower extremities based solely on the petitioner's own reports

which he "assumes are true". He did not find the petitioner's complaints to be disproportionate to her diseases and stated that additionally that she experienced pain and easy fatigue although he also characterized her pain as chronic and slight with some recurring painful events of a moderate nature.

7. To the extent that the two reports above agree, they are adopted as findings herein. Although the two treating sources are very similar in their analysis of the petitioner's residual functional capacity, to the extent they significantly diverge, the current treating physician's opinion on her functional ability is found to be more credible and is adopted herein as a finding of fact. That resolution of the conflict is based on the fact that the rheumatologist has most recently been involved with the petitioner, is a specialist in the area, and supported his opinions with several pages of progress notes which he had prepared over the last year. The other physician reported that he had not seen the petitioner since 1989 and it is not clear that he knows what the petitioner's complaints are at present.

8. To the extent that the petitioner's complaints, especially their severity, are not supported by her current treating physician's opinion, they cannot be credited as fact. Although the petitioner undoubtedly sincerely believes that her condition is disabling, her treating specialist's opinions as well as her admitted ability to

carry out all the regular activities of daily living make it appear that she actually has the functional capacity to engage in substantial, gainful employment.

9. The petitioner's many medications are expensive and if she does not continue to buy and take them the petitioner most certainly will regress and she will require hospitalization. The petitioner does not know how she can pay for her medicines without Medicaid which she had received for several years as the head of an ANFC household.

ORDER

The Department's decision is affirmed.

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 petitioner has demonstrated that she can no longer perform her prior work so the burden falls to the Department to show there is other work in the economy which the petitioner can do. The Department has met that burden by showing that the petitioner possesses the residual

functional capacity to perform sedentary work as that term is defined in the Social Security regulations:

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.

Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 416.967(a)

Although the petitioner experiences some non-exertional limitations such as pain, fatigue and environmental restrictions, the evidence shows that they are slight and do not significantly interfere with the petitioner's ability to do sedentary type work. It must be concluded, therefore, that the petitioner can perform a full range of sedentary work.

The Medical-Vocational Guidelines (the "grid") find that a "younger individual age 18-44" with a high school education who is limited to sedentary work is capable of substantial and gainful employment and, thus, directs a finding of no disability. 20 C.R.F. § 416, Subpart P, Appendix 2, Rule 201.27, 201.28 As the petitioner is not disabled, she is not eligible for Medicaid.

The petitioner is advised that if she is unable to obtain employment sufficient to pay for the expenses of her medication, she may be eligible for assistance with her medications through the Department's General Assistance program.

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