

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,006
)
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

The petitioner is a forty-seven-year-old man with a high school GED and a work history as a security guard. For the last several years he has had severe lower back pain that radiates down his hips and legs. It appears, however, that the petitioner has never had a treating physician.

The petitioner underwent a consultative neurological examination in January, 1993. At the time he was complaining of radiating back pain and stiffness that was made worse by lying down or sitting for prolonged periods of time. The findings and assessment of the consulting neurologist were as follows:

OBJECTIVE

On examination, the patient is a thin man who looks somewhat older than his stated age. His blood pressure is elevated at 175/105. I informed him of this and advised him to get some medical help as soon as possible.

Station and gait revealed him to have a slightly stooped

posture, but otherwise the gait was not impaired. He could walk on his heels and toes. Head and cranial nerve examination showed the upper extremity examination was entirely normal.

His spine showed a mild kyphosis, and the spine itself showed a remarkable lack of range of motion. Almost all of his motions seems to occur from the hips with very little flexion and extension or lateral flexion occurring in the spine itself. He has no tenderness over the spine or the paraspinal areas.

Straight leg raising is negative, and motor, bulk, tone, coordination, strength, reflexes, and sensation in the lower extremities is entirely normal. Plantar responsive to flexor.

ASSESSMENT

The patient is with hypertension, who has subjective back pain. The major objective finding is what I would perceive to be truly a significant loss of range of motion of the spine. This raises the question of the need for further workup, including x-rays, further evaluation for entities such as ankylosing spondylitis, etc. He has no neurological deficits.

X-rays taken at that time (which the neurologist did not have the benefit of seeing) indicated: "Findings compatible with ankylosing spondylitis".

The most detailed description of the petitioner's condition and level of functioning is contained in the following letter to the petitioner's attorney, dated October 11, 1993, from an internist who has recently begun treating the petitioner:

I saw [petitioner] in my office on 9-27 and again on 10-4-93. He brought with him a letter from you asking why he had come to see me since his only other visit was 2-12-93 when he had elevated blood pressure. He was placed on an anti-hypertensive called Plendil. That was the only prior time I saw him. Obviously I was unprepared to answer your questions. This patient has a lot of complaints and is in need of medical care.

However, until he came to me, he did not have a private physician. On 9-27 he wanted to discuss all of his other complaints, and I hadn't scheduled enough time. After going over schedule, I had to arrange for him to come back on 10-4-93. I believe he has the following disabling conditions: 1. Ankylosing spondylitis. I do not have blood work and x-rays to confirm this, but he has all the classic physical findings. Subsequent back pain and sciatica would be disabling. 2. Fatigue, etiology unknown. This may be due to ankylosing spondylitis as fatigue is a symptom of this systemic, genetically inherited disease. 3. Sciatica 4. Recovering from pneumonia, 5. two pack a day smoker. 6. Probable personality disorder. He has never held a job very long. Due to stress he is unable to deal with people. He has worked as a night watchman. If he has enough alcohol on board, he can deal with that job. He isn't drinking now, and I don't have a clear picture of his drinking habits, so I can't make a diagnosis of alcoholism.

Patient is 5'11" tall and weighs 151. This is at the low end of the height/weight ratio. With his two pack a day smoking habit and his dysfunctional behavior in society, I am not surprised that he is unable to gain weight. As regards weight being healthy for his height, I am unable to answer as there is a lot of controversy in the medical field. There are those who would argue that the less weight the better, but I don't have lab studies to make it possible to answer that question at this time.

With regard to your question as to whether [petitioner's] ability to sit, stand, and walk is restricted by back and leg pain, yes, it is. Exactly how much, I don't know. His hip rotation is limited to 45 degrees where I'm able to do twice that. He does it slowly and with pain. He has classic physical findings consistent with ankylosing spondylitis, mainly straightening and loss of flexibility of the lower spine. When I asked him to bend and touch his toes, he got from approximately mid thigh level and had to stop because of pain.

I think that [petitioner] is unable to work at this time. While certainly there are medical treatments available for ankylosing spondylitis, due to his lack of Medicaid coverage, he is unable to buy medications. As a rule, they tend to be expensive. If his pain could be controlled, he could move further, but that coexisting condition of fatigue which if it is related to his ankylosing spondylitis, may continue to bother him the

rest of his life. That is less amenable to cure and is usually treated by frequent naps or rest.

The third co-existing condition, and probably the most disabling one although it may be the most difficult to obtain from him is his personality disorder. He appears to me to be clearly dysfunctional with people. He is highly agitated that he has to discuss some episode that happened twenty years ago in the army with a female psychologist. He said it was sexually related and had been resolved. He received an honorable discharge from the service. He refused to go into any further details with me, and doesn't intend to discuss that episode with the psychologist. Whether that is the cause of his personality disorder and inability to function around people, or only a contributing factor, the fact remains that this is a gentleman who would not at this time be able to work at any job where there is face to face interaction with people.

In answer to your last question, I do feel that [petitioner] is unable to work due to the above-mentioned medical problems, and I am quite certain that these problems will make him unable to work for a minimum of five months and quite possibly for the rest of his life. I do concede that appropriate therapy has not been tried yet.¹

In October, 1993, the petitioner also underwent a consultative psychological examination. The examiner concluded that the petitioner had significant anxiety and suffered from a "social phobia".

Based on the above reports it is found that since at least January, 1993, the petitioner has suffered from a painful and chronic disease in his lower back that has limited

¹In a follow-up note dated October 13, 1993, the internist offered the following addendum to his earlier report:

Please note the following correction to my letter on 10-11-93, regarding [petitioner]: [Petitioner's] medical condition is disabling not for five months, but for at least 12. I apologize for the error in my original letter.

his ability to engage in any work activity, including sitting for any significant length of time. These physical limitations, coupled with significant psychological problems, have rendered the petitioner unable to perform any substantial gainful activity on a regular and sustained basis.²

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M 211.2 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.

As found above, the petitioner meets both the severity and duration requirements of this definition. Therefore, the Department's decision is reversed.

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²Because the petitioner's disability has already lasted the requisite one year in duration (see *infra*) it is unnecessary to render specific findings as to which of the internist's statements (*supra*) of probable duration (i.e., five months or one year) should be considered the most likely. Either way, the petitioner meets the duration requirement.