

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,014
)
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 thirty-year-old man with a high school education. He is a blacksmith by trade. In April, 1992, he was kicked by a horse and broke his wrist. In July, 1992, he underwent surgery to repair the damage caused by this injury. In August, 1992, he fell and broke his other wrist. Healing has been slow and he continues to wear braces on both wrists.

In its decision in this matter in March, 1993, DDS determined that the petitioner had been totally disabled since August, 1992, but that by August, 1993, he would recover sufficiently to return to his former work. Thus, the issue in this case is limited to one of duration (see infra).

It now appears that the petitioner's wrists are not healing as expected and that the petitioner will have to undergo further surgery. The following statement from the

petitioner's treating physician summarizes the petitioner's status:

This patient recently saw his orthopedist, [name], who had done surgery on both his wrists which were both fractured at different times. Approximately 1-27-93, [name] saw the patient and said that the wrists were not healing and both would have to be resurgerized. He was also told by [name] he should do not (sic) type of work until these surgeries are accomplished and his forearms are completely better.

I would concur with this and would think you could get a better opinion about when the patient could return to any kind of employment following his surgeries. I believe one wrist will be done within the next two or three weeks. Of course, they will be done at different times so the patient could function better in every day matters. Otherwise, I would say this patient probably could not do any kind of employment for the next six months at least until he has recovered fully from both wrist surgeries.

In a brief note, dated June 9, 1993, the treating physician reiterated that the petitioner "should not work" due to the "failure of fracture to heal".

The above reports are uncontroverted and the Department declined the opportunity to pursue any further assessment of the petitioner.

Based on the above, it is found that the petitioner's disability, conceded by DDS to have commenced in August, 1992, will last at least through August, 1993.

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.

As noted above, uncontroverted medical evidence in this case establishes that the petitioner's disability, found by the Department to have commenced in August, 1992, will last the requisite 12 consecutive months. Thus, the above definition is met, and the Department's decision is reversed.

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