

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,025
)
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-five-year-old man with a seventh grade education and a work history of unskilled physical labor. He has not worked since 1991 because of worsening back pain.

The medical record shows that the petitioner injured his back in 1986 when he fell from a height of three stories. Although he was able to continue working for a few years after his injury, by April, 1992, he was out of work and seeking medical intervention at a clinic specializing in spinal problems. An April, 1992, MRI was positive for "degenerative disc space disease at L4-5 and L5-S1". In a June, 1992, assessment of the petitioner from that clinic it was noted that he was "very limited in (range of motion) of trunk, hamstrings and neck". It was also noted that his discomfort was aggravated by "sitting, standing too long, (and) prolonged

positioning". At that time a home-based moderate exercise program was prescribed.

In November and December, 1992, however, the petitioner's physician noted that the petitioner's problems had persisted and that his trunk range of motion remained markedly restricted. At this time surgery was advised.

In late January, 1993, the petitioner underwent surgery for a "percutaneous external fixator placement". This was only partially successful, however, at reducing the petitioner's symptoms, and in April, 1993, he underwent surgery for "posterior lumbar spinal fusion from L4-S1 with Selby instrumentation and left posterior iliac crest bone graft".

The most recent medical evidence, a May 25, 1993, note from his treating physician indicates that for three more months the petitioner would be limited to lifting no more than 10 pounds, with no prolonged sitting, and no stooping, bending, or twisting.

Based on the above, which is uncontroverted, it is found that since at least April, 1992, the petitioner has been continuously precluded from performing any conceivable work activity on a regular and sustained basis. Although it appears that the petitioner's symptoms might be expected to improve soon, he has clearly met the one-year durational requirement for disability (see infra) as of this time.

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.

In this case, uncontroverted medical evidence clearly establishes that as of at least April, 1992, the petitioner has met the above definition. The Department's decision is, therefore, reversed.

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