STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 14,368
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare finding that he is ineligible for Medicaid benefits based on a failure to prove disability.

FINDINGS OF FACT

1. The petitioner is a forty-one-year-old man who completed the eighth grade and later got his G.E.D. He has a work history as a construction worker and sheetrocker but has not worked since 1992. He applied for Medicaid benefits in March of 1996, but was denied because his condition was not considered serious enough.

2. The petitioner claims disability based on heart problems, knee and back problems, and depression. DDS agrees that he has moderate limitations with regard to lifting (50 pounds occasionally, 25 pounds on a regular basis) and that he probably cannot do his former jobs. However, a determination was made that there are other jobs available within the range of the petitioner's physical limitations and that his psychiatric limitations are not significant enough to compromise his ability to work in these other jobs.

3. There are no objective findings, including

observations and laboratory tests, which confirm the existence of heart disease in the patient in spite of several tests performed on him. Neither has there been any discovery of knee or back problems which might be causing pain. In spite of this lack of evidence, the three physicians[1] who have been treating him from 1994 to the present, have stated consistently on several General Assistance forms, that they believe that he experiences chest, back and knee pains; that those pains have limited him physically; and, in conjunction with his depression, have caused severe anxiety which imposes both mental and exertional limitations which keep him from working. He has been treated, somewhat successfully, with nitroglycerin for the pain. Remarks have been made in the medical evidence by various providers that the petitioner's past abuse of alcohol and current abuse of caffeine and tobacco put him at risk for heart disease, although he has refused to modify these risks factors. The opinions of these three treating physicians are found as fact herein.

4. At the time of his initial application, the petitioner was not receiving any treatment for mental health problems. He had been evaluated by a psychologist

[1] The Department has asked that the opinions of one treating physician be disregarded because that physician has since lost his license for drug-related offenses. That request is denied because there has been no showing that his opinion with regard to the petitioner is invalid or unworthy of belief because of his subsequent unrelated professional misconduct.

in February of 1995, presumably for a Social Security application. It was the opinion of this psychologist at that time that the petitioner had an I.Q. in the 85-95 range. He noted that the petitioner reported he was a recovering alcoholic and seemed to have no problems functioning with regard to daily activities or work instructions. A psychologist hired by the petitioner reviewed this evaluation and noted that the petitioner had made several statements to the psychologist (having no friends since he quit drinking, about his alcoholic history, his anger which caused him to be fired from every job he ever had, and cost him five marriages) which suggested that he might have a deviant emotional or behavioral problem or depression which deserved further investigation. While he noted that the examining psychologist offered no diagnosis, he did offer a prognosis saying that he was "not likely to change" which the reviewer felt implied that the examiner did feel there was some psychiatric illness.

5. In April of 1996, after the current application, the same psychologist was asked again to assess the petitioner for his mental status. The psychologist did not remember the petitioner from the previous year. He estimated the petitioner's I.Q. at 80-84. He said the petitioner recounted losing weight, poor appetite, lack of sleep and anxiety stemming from his past history as a

foster child and alcoholic. He noted he was taking a medication for depression but it didn't seem to help. He also reported that the petitioner said he had been fired from every job he had due to problems with bosses and peers. The psychologist suggested in his report that supervision and attendance would be major problems for him in employment. Again, he made no diagnosis but commented that the petitioner had a depressed demeanor and was "not expected to change".

6. Based on this last psychologist's report, the DDS assessor (who did not meet with the petitioner) diagnosed the petitioner as suffering from an affective disorder, a personality disorder, and dysthymia which he thought caused moderate problems with social functioning, slight problems with daily activities and frequent deficiencies of concentration. The petitioner disagreed with this assessment and started receiving regular psychiatric treatment in an effort to receive help and to get a more detailed analysis of his mental situation.

7. In November 1997, the patient began treating with his current psychiatrist. The psychiatrist's initial impression of the petitioner was that he had suffered from major depression during the last seven months, with a history of dysthymic symptoms and a history of dependency on alcohol and amphetamines. He also felt the petitioner had a borderline personality with narcissistic and

antisocial personality traits. His opinion was that the patient's insight and judgement appeared to be marginal at times when he was forced to work or live with people and that his poor history of working with others "[m]ay be the biggest factor that precludes [him] from successfully reentering the workforce." He did not feel that the petitioner could work even part-time for the next twelve months because of the "severity and chronicity of his conditions". He changed his medication and saw him again in December 1997, when he observed that he was somewhat improved in mood but continued to be anxious.

8. After seeing the petitioner a few times, the psychiatrist stated in January of 1998, that he felt the petitioner had recurrent major depression with marked features, a history of dysthymic depression, mild residual post traumatic stress disorder, a history of alcohol and amphetamine abuse, borderline personality with antisocial and passive aggressive personality traits and extensive physical and mental abuse as a child, including living in 37 different foster homes in one year. He described the petitioner as chronically anxious and irritable, unable to sleep, easily angered, oppositional, unable to assume responsibility, unable to relate to others, socially isolated, and easily frustrated. He felt these traits interfered with his ability to maintain employment and that he was in need of supportive therapies and improved

psychotropic medications to get relief from his symptoms.

9. On July 2, 1998, the petitioner's treating psychiatrist wrote a further letter stating that he meets the criteria for borderline personality found in the DSM-IV, including:

> 1) A pattern of unstable and tense interpersonal relationships characterized by alternation between extremes of idealization and devaluation.
>
> 2) Identity disturbance: markedly and persistently unstable self image of sense of self.
>
> 3) Impulse activity in at least two areas of potentially self damaging. eg. Spending, sex, substance abuse, reckless driving, binge eating.
>
> 4) Inappropriate and intense anger and difficulty in controlling anger.
>
> 5) Affective instability due to marked reactivity of mood.
>
> 6) Transient stress related paranoid ideation or severe dissociative symptoms.

It was his opinion that the petitioner has had this condition all of his adult life and that it has contributed to his long-standing social isolation, and lack of success in marriage, the army, and work situations. He also issued an addendum in August of 1998, saying that the petitioner's inability to function would continue even if his alcoholism were in complete remission (as the evidence seems to indicate at present) due to the severity of his symptoms.

10. It is found that the opinions of the treating psychiatrist with regard to the petitioner's mental condition are more accurate than those of the psychologist

who interviewed him on two separate occasions a year apart, because the psychiatrist has superior training, his knowledge of the petitioner is greater and his reports were more thorough. The treating psychiatrist's opinions are also found to be more accurate than the assessment of the DDS reviewing physician who relied on the psychologist's reports and never saw the petitioner. The treating psychiatrist's opinions are fully adopted as fact in this matter.

ORDER

The decision of the Department 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.

While the petitioner's physical problems are not disabling alone, the evidence is clear that the petitioner has a mental disorder which either alone or in combination with his physical ailments, meets or equals in severity

those illnesses listed as disabling in the Social Security regulations under "personality disorders":

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 complete tasks in a timely manner

> (in work setting or elsewhere); or
>
> 4. Repeated episodes of deterioration or decompensation in work or work-like settings which causes the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors.)
>
> 20 C.F.R. ∋ 404, Subpart P, Appendix 1

The petitioner's treating psychiatrist has confirmed that his current condition and history indicate that he has met the listing above for most of his adult life and that his condition is likely to continue at this level of severity until he receives adequate treatment. As the petitioner has shown that he has an impairment which continues to meet requirements in the Listing of Impairments, he must be found to be disabled. 20 C.F.R. ∋ 416.911.

The petitioner should be aware that the Medicaid regulations do require him to follow prescribed medical treatment for his various conditions unless he has good cause not to do so in order to receive continuing benefits. 20 C.F.R. ∋ 416.930. He is encouraged to seek and follow treatment prescribed by his physicians.

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