

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,223
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for ANFC for the months of September and October, 1997. The issue is whether the petitioner was unable to work due to a "high-risk pregnancy" during that time.

FINDINGS OF FACT

1. The petitioner is a twenty-one-year-old single woman.
2. She was employed until August, 1997, when she stopped working because of complications she was having with her pregnancy. At the time she had no other children.
3. After she stopped working the petitioner applied for ANFC, while she was still pregnant. The Department denied that application on September 18, 1997.
4. The petitioner's child was born on November 9, 1997. The Department found the petitioner and her child eligible for ANFC as of that date.
5. The medical evidence in the case is sparse. On a work search form dated August 20, 1997, the petitioner's regular physician indicated that due to "syncope" the petitioner should not perform any work because she was "at a

high fall risk until delivered".

6. On a residual functional capacity form dated August 22, 1997, the petitioner's treating ob./gyn. indicated that the petitioner had the "unrestricted" ability to sit during a workday and that the "working conditions" to be "avoided" were "lifting > 10 lbs." and "prolonged standing > 2 hrs. at a time".

7. The hearing in this matter was first convened on November 14, 1997. At that time a continuance was granted to allow the petitioner to submit further medical evidence reconciling, if possible, the apparently-conflicting opinions of her doctors, noted above, regarding her ability to perform work-related activities in the two months before she gave birth. Despite further continuances until March 20, 1998, the petitioner failed to submit any further medical evidence.

8. In the absence of any other evidence, it is concluded that the specific opinions regarding the petitioner's residual functional capacity given by her treating ob./gyn. are entitled to more weight than the general comments of her regular treating physician. Based on those specific comments, it is found that during the period in question the petitioner was at least capable of working a mostly sedentary job that did not involve lifting more than 10 pounds.

9. The Department subsequently determined that in the

area covered by the Department of Employment and Training (DET) office in the petitioner's town of residence during the time at issue herein there were 114 clerical and sales job openings for which the petitioner would have met the physical and educational requirements.

ORDER

The Department's decision is affirmed.

REASONS

In order to qualify for ANFC without an eligible child living in the home a pregnant woman who is not a minor must have an "expected deliver date . . . within the three month period following the date of application" and must have verified that she is "unable to work due to a high-risk pregnancy". W.A.M. § 2242. The regulation provides that pregnant women who have been determined disabled under the criteria for Medicaid are presumed to be unable to work due to high risk pregnancy. For women who do not qualify for Medicaid (i.e., those that are not expected to be unable to work for at least 12 consecutive months) the regulation also provides as follows:

The ability to work of all other pregnant women having no children in their household who seek ANFC benefits before the 30th day immediately preceding the pregnant woman's expected delivery date (and who are not eligible as minors and not members of the grandparented group identified in the following bulletin) shall be determined on the basis of a case-by-case assessment of

the medical conditions present, to what degree those conditions are controlled or modified by treatment, and other relevant medical factors.

This determination shall be made by the commissioner or his or her designee on the basis of medical evidence provided by the woman's obstetrician, nurse-midwife, or other qualified medical professional (as determined by the commissioner or his or her designee) and obtained by the pregnant woman, and additional medical data when deemed necessary by the commissioner or his or her designee, which he or she shall obtain from the treating obstetrician, nurse-midwife, or other qualified medical professional, or on a consultative basis.

Medical professionals who perform examinations required to enable the department to determine a pregnant woman's ability to work due to a high-risk pregnancy will be provided reasonable reimbursement from administration funds.

The determination of a pregnant woman's ability to work shall be based on whether she can perform any substantial gainful activity which exists in the local or adjacent labor markets and shall not be limited to a determination of whether she is able to perform work in which she is currently or has been previously engaged.

Non-medical factors, including but not limited to previous employment history, current employment status and availability of alternative sources of income support, and health-related factors, such as a pattern of substance abuse on the part of the pregnant woman, or other high-risk behaviors on her part, shall not be the basis of a determination that a pregnant woman is unable to work due to a high-risk pregnancy.

Though arguably extremely restrictive, the intent of § 2242 is clearly to determine whether a woman with a high risk pregnancy is truly unable to work at any job that might be available to her in and around her community. Based on the above findings, it must be concluded that the petitioner, despite her documented impairments, had the "ability to work" within the meaning of the regulation. The

Board is, thus, bound by law to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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