

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 8493
)	
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 47-year-old man with a high school education. He has worked as a truck driver and as an owner/operator of a small grocery store.

In November, 1987, the petitioner injured his right eye in an accident. A piece of metal entered the eye and had to be surgically removed. Following the surgery the petitioner suffered at least two retina detachments in that eye which also required surgical repair. As of May, 1988, the petitioner has lost the functional use of his right eye, and had only 20/50 vision in his left eye. At that time his doctor wrote that the petitioner was "functionally disabled" because he could not meet the visual requirements for a drivers license.

A hearing in this matter was first held in July, 1988. At that time the petitioner testified that he could not

engage in any activity that would subject his recently-repaired retina to another detachment. A medical report based on a June, 1988, office visit also noted that the vision in the petitioner's left eye had deteriorated.

In preliminary findings (issued in a memo dated August 24, 1988) the hearing officer concluded that the petitioner could not perform his past work and that he was also "precluded from work requiring acute vision, driving, being exposed to bright light, vibrations, airborne irritants, unprotected heights, and other hazards, and entailing repetitive bending at the waist or lifting (over 20 pounds)." Inasmuch as those findings precluded the petitioner's performance of a full range of "sedentary work" as defined in the regulations,¹ the hearing officer continued the matter for the taking of expert vocational testimony as to whether there existed in the national economy a significant number of jobs that would accommodate the petitioner's limitations.

Further hearing was held in January, 1989, at which time the department offered the testimony of a vocational expert regarding specific jobs the expert felt were within the petitioner's residual functional capacity. It soon became apparent, however, that the petitioner's legal representative had a very different impression from that of the department's expert as to what the hearing officer had meant in his preliminary findings regarding the petitioner's "acute vision" (see supra). After reviewing

the written record, the hearing officer concluded that there was insufficient medical evidence upon which to make precise findings as to the petitioner's visual limitations.

Since this determination appeared to be crucial in defining the petitioner's ability to perform specific jobs, the matter was again continued to allow the parties to obtain further evidence on this question. In addition, the parties agreed to have the petitioner's doctors answer specific interrogatories regarding the petitioner's visual limitations.

The petitioner submitted a February, 1989, report from his treating physician stating that it would be "dangerous" for the petitioner to work at jobs using sharp objects or tools, reading gauges on machinery, and pouring hot liquids. The physician also noted that the petitioner could read "with difficulty" and had "no limit below 25 lbs." of lifting. The physician also stated, however, that the petitioner should be checked by an ophthalmologist for a determination of his visual acuity.

Unfortunately, it was not until May, 1989, that the petitioner was tested and evaluated for visual acuity. Following that examination the ophthalmologist submitted the following responses to interrogatories the parties had posed to him:

Q: What size print can [petitioner] read?

A: Using magnification lens, he can read (20/50) 1
in
at 8 ".

Q: Can he read newsprint-sized text?
the phone book?
a magazine or novel?

A: Yes - with special optical aids.

Q: Can he read a computer screen?
a household size thermometer?

A: Yes Again with optical aids, not with regular
corrective lenses.

Q: If [petitioner] is able to read, for what length
of time can he read standard size print, such as
newsprint or printed directions, without experiencing
problems with his eye(s)?

A: He is not motivated to read, however he can read
as much as he wants without damaging his eye.

Q: How does his impaired depth perception affect his
ability to read?

A: No.

Q: How do the ambylopia in his left eye and his
retina damaged right eye with a cataract interact
regarding his ability to read?

A: Not at all.

Q: Is it dangerous for [petitioner] to use power
tools or sharp objects such as knives because of his
impaired vision? Why?

A: With careful training and protective eye gear
this should be possible.

Q: Is it dangerous for [petitioner] to operate
machinery that requires him to read thermometers or
air pressure gauges? Why?

A: It would be difficult, but not impossible.

Q: Is it dangerous for [petitioner] to perform a job
where he is required to pour hot liquids, such as
coffee? Why?

A: No, it does not require depth perception as we
know it.

Q: Please describe at what distance [petitioner] can
see objects.

A: You will have to be more specific.

In addition to the above, the examiner found the petitioner's vision in his left eye to be 20/80. There was no visual acuity found in the petitioner's right eye.

Following another delay after the submission of the above report, the hearing was again reconvened (on December 12, 1989) for the taking of vocational testimony. Based on directions from the hearing officer (see Memorandum dated September 21, 1989) that the petitioner's visual limitations would be found to be as described in the above interrogatories, the department's vocational expert submitted a written list containing hundreds of jobs which he felt were within the petitioner's residual functional capacity and vocational qualifications.

Based on the above-cited medical evidence and vocational assessment, it is concluded that the petitioner retains the residual functional capacity to perform many sedentary and light jobs that do not involve the use of dangerous tools and equipment and the reading of precise instruments. Generally, the medical reports establish that the petitioner, with optical aids, can read newsprint and computer screens. He has no limitations in sitting, standing, walking, or lifting less than 25 pounds. Common sense dictates that there are many factory-assembly and office jobs that would accommodate these limitations. Although one can (and the petitioner does) nitpick with

some of the specifics of the department's vocational assessment, it is concluded that, overall, it evinces the existence of many jobs that the petitioner could perform.²

The petitioner also argues that his condition has improved over the course of these protracted proceedings and that, because of this, it is necessary to determine his ability to work for the first twelve months following his injury. While the hearing officer agrees with this legal proposition, he concludes, however, that there is insufficient medical evidence to establish any requisite period of disability given the medical and vocational findings described above.³

ORDER

The department's decision is affirmed.

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.

Under the above definition, once it is found that an

individual cannot perform his past work, the burden of proof shifts to the department to establish the existence of specific alternative jobs that the individual--considering his impairments, age, education, and work experience--can perform. See Fair Hearings No. 8690 and 8438. In this case it must be concluded that the department has met this burden.

The medical evidence establishes that the petitioner, with corrective lenses, can read newsprint-sized materials on paper and computer screens.⁴ He can sit and stand without restriction, and he can lift up to 25 pounds. He is in his late forties and has a high-school education and work experience that includes running his own business. Considering these factors, it is concluded that the department has sufficiently identified (if, indeed, common sense and experience do not dictate) the existence of several jobs the petitioner could reasonably be expected to perform. Thus, it must be concluded that the petitioner does not, and never did, meet the above definition of disability. The department's decision is affirmed.

FOOTNOTES

¹20 C.F.R. § 416.967(a).

²The petitioner argues that some of the expert's conclusions are inconsistent with the hearing officer's earlier findings regarding environmental hazards. However, subsequent medical evidence strongly suggests that protective eyewear would reduce or eliminate many of these risks. The petitioner has not convincingly rebutted the expert's assumption that most of the jobs in question would

not expose the petitioner to untoward risk of bodily injury.

³It is the petitioner's burden of proof to establish that his visual acuity was significantly worse throughout any previous 12-month period than that found by the ophthalmologist in May, 1989. Nothing in the medical evidence so establishes this allegation.

⁴The petitioner did not establish that corrective lenses are unavailable or inappropriate for his use.

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