

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re ) Fair Hearing No. 8576  
 )  
Appeal of )

## INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her 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 48-year-old woman with an eleventh-grade education and no relevant work history. In February, 1988, after complaints of increasing chest pain, the petitioner was diagnosed as having a large thoracic aortic aneurysm. In March 1988, the petitioner underwent a surgical resection. At that time, a second aneurysm (abdominal aortic) was discovered, but was not surgically corrected.<sup>1</sup>

Since her surgery the petitioner's recovery, as described by her treating physician, has been "very slow". In a recent report, her physician stated that her abdominal aneurysm may need resection later and that "it will be many years before she can work full time."

The most striking effect of the petitioner's condition is a severe weight loss. In July, 1988, her physician reported her weight at 92 pounds. The petitioner is 66

inches tall.

In addition to her aneurysms, the petitioner suffers from diverticulitis and back pain. The former problem appears to be controlled by medication, but the latter has been described (by her treating physician) as "chronic muscle weakness which probably will persist." An X-ray in December, 1987, found "sacralization of the left transverse process of L5, and this finding can be a cause of low back pain." Otherwise, the X-ray was "normal".

Based on the above clinical findings, it must be concluded that the petitioner's impairments are the medical equivalent of those "listed" in the regulations, and that they will remain so for at least twelve consecutive months.

ORDER

The department's decisions 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.

The regulations also provide that a person is disabled

if her impairment will last twelve months and meets or equals the "listings" in Appendix I of 20 C.F.R. § 404, Subpart P. 20 C.F.R. § 416.925.

Section 4.11A of the listings describes "aneurysm of aorta or major branches with acute or chronic dissection not controlled by prescribed medical or surgical treatment." Section 5.08A of the listings describes "weight loss due to any persisting gastrointestinal disorder" with a "weight equal to or less than the values described in Table I or II." Table II (pertaining to women), which scales weight to height, shows a listing-level weight of 98 pounds for a woman of the petitioner's height (66 inches).

The fact that the petitioner cannot, within a year, reasonably expect to have her aneurysms "controlled" by surgery appears to be sufficient to meet the listing under § 4.11A. Moreover, although her weight loss appears to be related more to her surgery than to her gastrointestinal problems, her weight is significantly (6%) under the listed threshold in § 5.08A.<sup>2</sup> Add to these problems the petitioner's back pain, it must be concluded that the petitioner's overall condition is at least the medical equivalent of the listings. Therefore, the department's decision is reversed.

FOOTNOTES

<sup>1</sup>DDS appears to have been unaware of the petitioner's

second aneurysm.

<sup>2</sup>Section 508C of the listings (also under "aneurysm") refers to a separate weight loss table for aneurysms accompanied by "renal failure". Although there is also no evidence that the petitioner's weight loss is kidney-related, her weight is more than 13% under the listing in this table.

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