STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 8619
	)	
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.[1]

FINDINGS OF FACT

The petitioner is a 48-year-old woman with a 9th-grade education. She has worked at a variety of office clerk jobs and as a nurses aide. She last worked in 1985.

The petitioner suffers from a myriad of physical and psychological problems. Until recently, she lived in California, where she was apparently found to be eligible for disability-based medical coverage. A medical evaluation from the California Department of Social Services, dated December 16, 1987, reads as follows:[2]

> Diagnosis is failed carpal tunnel syndrome surgery, chronic lumbosacral strain and severe situational anxiety and depression.
>
> History: This is a middle-aged female who underwent a carpal tunnel operation on October 30, 1986 by Doctor Bagwat in San Jose at O'Connor Hospital for decompression of the right median nerve. Apparently this was not successful and patient has had residual weakness and approximately 40% to 50% loss of function of the right hand and wrist. Patient has received physical therapy

> since that time with minimal improvement. Furthermore, patient does have on physical exam chronic muscle spasm and decreased range of motion of the low back area, although patient is quite overweight as well.
>
> Mental Status: Patient is rather anxious and depressed because since the surgery did reproduce a poor result. Patient has been unable to work because of this reason. Copy of laboratory reports and office visits will be enclosed.
>
> Diagnosis
>
> 1. Carpal tunnel syndrome postop with poor result.
>
> 2. Chronic lumbosacral strain.
>
> 3. Severe anxiety and depression.

The record indicates that in September, 1987, the petitioner's height was 66 inches and her weight was 281 pounds. Although the hearing officer could not locate more recent weight measurements in the record, DDS recently found that the petitioner "has remained overweight at 275 pounds at a height of 66 1/4 inches."

Since moving to Vermont, the petitioner has been examined and treated by a variety of medical specialists. She has been treated by an orthopedist for foot problems following surgery in October, 1987, for removal of bone spurs in her heel. In a report, dated November 9, 1988, the orthopedist gave the following assessment of the petitioner's foot problems:

> In synopsis form, the patient underwent surgery on October 6, 1987, and had excision of her heel spur. Since that time, she has a problem with swelling, hypersensitivity and difficulty in mobilizing. She had been placed initially in a 3-D brace and later had

> been prescribed an ankle/foot arthosis of the metal type, so as to minimize the stress on the heel. She has also been seen by Dr. Buckley for fibrocytic symptoms which are involving other parts of her body.
>
> Taking a very narrow viewpoint regarding her foot, I think that this particular part of her problem does not disable her from doing sedentary work. It is possible that the combination of the other factors, including her situational reaction and the fibrocytis in other areas may be a problem. Hopefully, Dr. Buckley could comment on that.

As indicated in the above report, the petitioner has, indeed, been treated for other physical and mental problems. A rheumatologist (the one referred to in the above report) who examined the petitioner in April and June of 1988, submitted the following report, dated October 26, 1988:

> This is in response to your letter requesting my medical opinion about [petitioner]. I saw [petitioner] for an evaluation on 4/18/88. Her complaints revolve primarily about lower extremity pain and hip pain. She had been seen by the Orthopaedists for osteoarthritis of her feet which had been bothering her for a year and a half. She had surgery in October of 1987. Without complete resolution. She also has knee pain and had been using a knee immobilizer for which she was seen in the Orthopaedic Clinic. She did not get a good response to nonsteroidal anti-inflammatory drugs. My feeling was that she had degenerative arthritis of the spine, knees and feet, which was made more severe by her obesity and deconditioning. Osteoarthritis is often not very responsive to nonsteroidals and she had not had a good response to these medications. Arthritis in this area would make it difficult for her to sit for more than twenty minutes at a time and would make it impossible for her to be ambulatory for any period of time at all.
>
> I only saw [petitioner] once in follow-up on 6/6/88 and had very little to offer her at that point. She was having problems with depression for which she was seeking counseling. At this second visit, [petitioner] talked about serious problems with depression and suicidal ideation.

> I do not expect [petitioner's] osteoarthritis to improve with time and likely, given her weight, she will have some deterioration. Since her arthritis is in major weight bearing joints and her back, it significantly affects her ability to work. Climbing stairs, lifting packages, bending would be impossible for her to do repeatedly and she is unable to walk without using a cane or some assistance due to pain. I am unable to make judgements on her ability to concentrate or remember since I did not specifically evaluate those areas. If I can be of further help, please feel free to contact me.

Since moving to Vermont the petitioner has primarily been treated at a comprehensive health care clinic. The following is an assessment dated October 6, 1988, from a resident physician at the clinic.

> I first saw [petitioner] in the Spring of 1988 at the Given Health Center on One South Prospect Street in Burlington. It is my understanding that full clinic notes from that period are available to you at this time. [Petitioner] had recently moved back to Vermont from California primarily because of financial concerns. She had been unable to work in California for some time related to multiple musculoskeletal complaints including significant disability from recent surgery involving the right heel, and both wrists. From that time to the present I have been involved in [petitioner's] care related to the following problems.
>
> The development of bone spurs in [petitioner's] right heel necessitated surgical removal while still in California as can be seen in the clinic notes from UHC. Postoperative course has involved significant disability related to persistent pain and difficulty walking and weight bearing with the right leg. [Petitioner] has been followed on an ongoing basis by Dr. Saul Trevino of University Orthopedics in Burlington for this problem. While it is clear that [petitioner] has experienced and will continue to experience a great deal of pain and difficulty with weight bearing on the right leg, the most specific information regarding long-term prognosis and ability to function in terms of walking would best be obtained from Dr. Trevino.
>
> In addition, [petitioner] has been treated for numerous musculoskeletal complaints including

> significant symptoms of pain and weakness in her hands for which she had in the past been treated with surgery to both wrists for carpal tunnel syndrome, and significant pain with walking in her left hip and left knee. It has been the opinion of Dr. Lenore Buckley, Division of Rheumatology at University Health Center that the patient's symptoms best represent a condition of fibrositis, and that patient has been treated with both Amitriptyline and Naprosyn. By the patient's report it appears that she suffers significant pain in the hands after continued use with activities such as writing or fine motor movements, and would suffer considerable pain if required to continuously use her hands in similar tasks at a desk job. It is unlikely that any side effects specific to the medications mentioned above would further inhibit her ability to work.
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> The patient has been seen by myself and Mr. Richard Bingham for significant problem with major depression. She is currently being treated with Amitriptyline but suffers from significant difficulties with ability to concentrate. This would likely inhibit her ability to function well in the workplace.
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> In the late 1960s [petitioner] underwent jejunoileal bypass operation as treatment for severe obesity. As a result of that operation she has suffered from chronic diarrhea which is currently being treated with dietary measures as well as medications to inhibit intestinal motility. It is unlikely that this particular problem would hinder her ability to pursue employment.
>
> In summary, [petitioner] is currently undergoing medical treatment for several ongoing conditions which would considerably compromise her ability to function well even in a sedentary employment situation. In addition, it is my opinion that she will continue to suffer significant symptoms from these medical problems for a time span greater than one year.

Finally, the record includes the following report, dated October 13, 1988, from the clinic's psychiatric social worker:

> [Petitioner] has given us permission to send you this report. I saw [petitioner] for four interviews between March 25, 1988 and April 28, 1988 for treatment of depression. She was also treated for depression with Amitriptyline, 100 mg. daily. [Petitioner] has multiple physical problems including

> hypertension, degenerative joint disease, low back pain, and a disabling bone spur in her right foot. The cumulative stress of physical problems have prevented her from maintaining employment and have also been the primary cause of her depressive illness. [Petitioner] is a person who has met many of her personal needs for self-esteem and satisfaction in her work role as a nurses aide or human services assistant. She has become depressed as she has been unable to perform the duties of this type of work due to her physical limitations. Her depression and physical impairments have existed for more than 12 months, and are likely to continue into the foreseeable future.
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> In my judgement, [petitioner] meets the criteria for disability. She has both physical and mental conditions that prevent her from being employed in any type of work. It is my expectation that her mental condition of depression will not improve until her physical problems are resolved and that until that time she is not able to maintain sustained employment in any type of work, sedentary or otherwise. She has poor capacity to concentrate or maintain sustained effort in work activities due both to chronic pain and her depressive illness.
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> My last visit with [petitioner] was on April 28, 1988 and at that time she was referred to the local community health center for continuing treatment of her depression because she no longer had the California Medicaid that was paying for her treatment prior to that time.

The above assessments are essentially uncontroverted and are supported by extensive treatment notes and hospital reports. Based on the above, it is found that the petitioner suffers from a variety of physical and mental problems which severely impair, if not totally prohibit, her abilities to sit, stand, walk, lift, bend, grasp, manipulate objects, concentrate, and relate to people in a work setting. The severity of her symptoms are verified by virtually every medical provider who has examined or treated her within the past two years.[3] It is virtually

inconceivable that in light of the above impairments that this unfortunate woman could perform any substantial gainful employment on a regular and competitive basis. The medical evidence is simply overwhelming that the petitioner is totally disabled.

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.

As found above, the medical evidence in this matter overwhelmingly establishes that the petitioner fully meets the above definition. Her weight alone is of listings level severity. 20 C.F.R. ɔ 404, Subpart P, Appendix I, Section 10.10A.[4] The department's decision is reversed.

FOOTNOTES

[1]The petitioner waived the right to an oral hearing. The hearing officer's findings are based solely on the written record.

[2]An issue not specifically raised by the parties is

whether, in the absence of a showing of any improvement in the petitioner's condition, Vermont DDS is bound by the prior determination of disability made by the State of California. However, in light of the overwhelming medical evidence that the petitioner is still disabled, this issue need not be reached.

[3]The opinion of a treating physician is binding unless controverted by substantial evidence. Bastien c. Califano, 572 F2d 700 (2d Cir., 1978).

[4]Unlike in some recent cases, DDS did have the benefit of the entire medical record (including those portions cited herein) when it reached its final decision (dated December 14, 1988) in this matter. In its "rationale" (which concluded that the petitioner could perform her past work) DDS not only ignored the listings, it cited medical evidence selectively and inaccurately. Moreover, it totally misapplied the law (supra) regarding the weight to be accorded the opinions of treating physicians. See Fair Hearing No. 6651. The hearing officer and the board hope that this decision by DDS is the unfortunate product of a new and inexperienced worker (in which case some training is in order!). If this is not the case, however, it can only be hoped that this decision does not represent a return to the chronic bias and incompetence that seemed to plague DDS determinations in the not-too-distant past. See Fair Hearings No. 6583 and 7099.

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