

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re                                 )       Fair Hearing No. 8813  
                                       )  
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.

SUMMARY OF THE EVIDENCE

The petitioner is a thirty-three year old woman who began drinking and using drugs as a teenager. Her drug use stopped about six years ago but she has been an active alcoholic all of her adult life. She dropped out of school at the end of the eighth grade and has never held any kind of a job for more than a few weeks. She has married and divorced, losing custody of her only child due to her drinking. Although she had been in and out of hospitals several times, she made no serious attempts before now, to stop her drinking. On average, she drank a case of beer and as much as a fifth of gin per day.

The medical records show that in May of 1988, the petitioner was admitted to the hospital with nausea, vomiting, jaundice, weight loss, depression and tenderness of the liver.

Tests revealed that she had hepatitis due to alcoholism and

she was treated for that condition and released in improved condition after three weeks. She was instructed to curtail her activities and was told that if her drinking did not cease, her life was in jeopardy.

This incident marked what appears to be a turning point in the petitioner's life. In June of 1988, she began seeing an alcohol counselor, twice a week and attending AA meetings 2-3 times per week. She testified that she has not drunk any alcohol in the last nine months. She has also started studying at home for her high school diploma following a course of study which emphasizes practical skills (such as balancing a checkbook).

The petitioner has taken the initiative to participate in a job training program sponsored by DET in which she is employed to work from 10 a.m. to 2 p.m. in the state employment compensation office at an hourly wage of \$3.65.

In practice she works no more than 15-16 hours per week. This is in part due to physical reasons (she is still weak and prone to minor illnesses as a residual of her hepatitis) in part due to her need to attend appointments and meetings, and in part due to her mental state (depression and fear). She says that her employers understand her problems and have been very supportive of her need to be away. On the job she has been learning to answer the phone, do filing, read and enter information into a computer. She says she has difficulty remembering

instructions and her employers have written down her instructions for her. There is no pressure on her to complete any specific tasks. After three hours at work, she becomes very tired and can no longer concentrate. This job will end in six weeks and the petitioner hopes to find another part-time job in a supportive environment where she can continue her training in employment skills.

The petitioner lives at her parent's mobile home and feels she is able to care for herself although, in reality, her mother does most of the cooking and cleaning. She hopes that when she is able to earn her own money she can get her own living unit. For now, she is committed to continuing her counseling, her AA meetings and her education and job training. She says she continues to be limited by fatigue, anxiety, and depression but that those problems are gradually abating.

The record includes three reports on the petitioner's mental condition. The first dated December 5, 1988 was prepared by the petitioner's licensed alcohol counselor, who holds a master degree in clinical psychology with eighteen years of experience in this field. The report states that the petitioner's fifteen years of severe alcoholism seriously retarded the development of her adult social and vocational skills, and that it may take years for her to "catch-up" to the point where she functions as a productive adult. She describes the petitioner as being at a "delicate time" in her road to sobriety, because while

she is very motivated to work and has, so far, done very well, she is also frustrated and anxious about her many unproductive years and the loss of her marriage and her child. The process of recovery from her years of hopelessness are slow and tedious.

The petitioner's therapist also filled out a "mental residual functional capacity assessment". In sum, the petitioner was described as having a persistent disturbance of mood (depression), being pathologically dependent and fearful of new situations, and having intense and unstable interpersonal relationships and impulsive and damaging behavior. These problems result in marked restrictions in her daily living abilities and social functioning and ability to interact with others (isolation due to alcohol), in her ability to make simple work-related decisions, and her ability to perform consistently during a normal work day and work week. Her problems often interfere with her ability to concentrate, and to be successful in work-like settings. She is also moderately limited in her ability to carry out detailed instructions, to maintain attention and concentration for extended periods, to work in coordination with or proximity to others without being distracted by them, to adapt to change in a work setting and to set realistic goals or make plans independently of others. A page regarding understanding and memory, and ability to carry out short and simple instructions was not filled out by the therapist due, presumably, to inadvertence. The

form concluded by saying:

[Petitioner] has significantly improved as to our first session. But because of chronic alcohol abuse, no significant training, no work habits, nor concentration have existed for at least fifteen years-- [petitioner] needs support to slowly integrate into adult living and an appropriate work environment. She is very honest about her fear of not being capable or when she is bored. She sincerely wants to progress and maintain recovery, and at times appears overwhelmed by the loss of her alcoholic past. [A sentence following this is illegible on the hearing officer's copy.]

The second report, dated 12/2/88, is by a psychiatrist who evaluated the petitioner at the request of DDS. He observed that the petitioner was mildly anxious, moderately depressed, had very poor concentration and short term memory and unreliable long term memory. He estimated her intelligence to be below average and noted she was frightened of the world; had limited interpersonal relationships and was in the process of learning a new way to live. He diagnosed her as alcohol dependent, in early remission; nicotine dependent; polysubstance dependent, in remission; dysthmic (chronic moderate depression) disorder; and possibly an amnestic disorder. Physically, she was noted to be still recovering from hepatitis with its attendant fatigue. He assessed her functional deficits as follows: Her ability to care for herself is limited by her fatigue; her daily activities and peer relationship are limited; her ability to get on with other individuals and groups is poor; her ability to communicate is fair; her ability to relate to persons in authority and cope with

social stresses is poor, her long term and immediate recall memory are impaired; her concentration is impaired; her ability to understand and remember one or two step job instructions is very poor; her judgment and ability to make simple decisions is poor as is her ability to meet production norms, complete tasks and tolerate work stresses. She was judged to have a limited ability to interact with others and only a fair ability to attend work regularly. The psychiatrist suggested that further psychological testing be done.

The petitioner was psychologically tested in January 4, 1989, at which time it was observed that the petitioner was able to partake in testing with reasonable attention, concentration and effort for almost three hours, although the psychologist noted the last half hour was difficult for her. The tests revealed that the petitioner has an I.Q. of 77, had an unusual amount of subtest scatter (i.e. she answered more difficult questions correctly and missed easier ones) suggesting that she had difficulty with attention and concentration. Her memory was measured and found to be "low average" but "adequate". The psychologist concluded that there was no reason why the petitioner "cannot continue to learn and benefit from her present job training program. She needs to be patient with herself, and accept that this will be a difficult process. Psychotherapy, which can help her to manage her anxiety and depression, will continue to be an important adjunct to her

recovery process."

FINDINGS OF FACT

1. The petitioner is a 33 year old woman with an 8th grade education and no relevant work experience.

2. The petitioner is recovering from a bout of alcoholic hepatitis which causes her to be fatigued.

3. The petitioner is addicted to alcohol and is in a state of early remission. She also suffers from a chronic depressive syndrome and possibly a personality disorder which is masked by her alcoholism.

4. The petitioner's medical condition is marked by persistent disturbance of mood or affect (depression), pathological dependence, and intense and unstable interpersonal relationships and impulsive and damaging behavior.

5. As a result of her medical conditions, the petitioner is markedly limited in her ability to care for herself (mostly due to fatigue and depression) and to socially function and interact with others due to her alcoholic isolation and immaturity. She has serious deficiencies of concentration which interfere with her ability to complete tasks in an accurate and timely manner. She has great difficulty dealing with new situations, adapting to work routines, dealing with supervisors and peers, attending work during the required hours and understanding and following simple instructions for

sustained periods of time. Those problems have in the past and continue in the present to interfere significantly with her ability to perform work.

6. The petitioner's current attempts to get her high school diploma through home study does not indicate that the petitioner has the ability to perform the functions needed to be substantially and gainfully employed.

7. The petitioner's current part-time work situation is "sheltered", that is, is performed under flexible and supportive circumstances for the primary purposes of training the petitioner rather than obtaining services from her. As such, it cannot be found that this job demonstrates that the petitioner has the necessary abilities to perform gainful employment.

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. 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 evidence clearly demonstrates that the



petitioner's medical condition either meets or equals the severity level set out in the listings of impairment at 20 C.F.R. Part 404, Subpart P., Appendix 12.09 D., Substance Addiction Disorders, as it incorporates § 12.08 under subparagraph D. Personality Disorders:

12.09 Substance Addiction Disorders:

Behavior change or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

- A. Organic mental disorders. Evaluate under 12.02.
- B. Depressive syndrome. Evaluate under 12.04
- C. Anxiety disorder. Evaluate under 12.06.
- D. Personality disorders. Evaluate under 12.08.
- E. Peripheral neuropathies. Evaluate under 11.14.
- F. Liver damage. Evaluate under 5.05.
- G. Gastritis. Evaluate under 5.04.
- H. Pancreatitis. Evaluate under 5.08.
- I. Seizures. Evaluate under 11.02 or 11.03.

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 settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

As the petitioner's impairment either meets or equals a listed impairment, the regulations direct that she be found to be disabled without further consideration of her age, education, and work experiences. 20 C.F.R. § 404.1520d

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