



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 31, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the SSI-Related Medicaid Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the SSI-Related Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: In order to be considered disabled, an individual over 18 must be unable to engage in any substantial gainful employment by reason of any medically determined physical or mental impairment which can be expected to result in death or which can be expected to last for a continuous period of not less than twelve months. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at your hearing revealed that in the opinion of the State Hearing Officer, you do meet the above stated definition.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate your benefits under the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Henrietta Martin, DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

_____,

Claimant,

v.

Action Number: 06-BOR-1151

**West Virginia Department of
Health and Human Resources,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 11, 2006 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on July 11, 2006 on a timely appeal, filed February 16, 2006. It should be noted that this hearing was originally scheduled for May 3, 2006. The claimant did not keep the appointment and an abandonment letter was sent May 4, 2006. The claimant responded in a timely manner and the hearing was rescheduled for July 11, 2006.

It should be noted here that the claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

The Program entitled SSI-Related Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The SSI Related Medicaid Program is a segment of the Medicaid Program available to individuals who meet the requirement of categorical relatedness by qualifying as either aged disabled, or blind as those terms are defined by the Social Security Administration for purposes of eligibility for SSI.

III. PARTICIPANTS:

_____, Claimant
_____, Claimant's Spouse
_____, Witness for the Claimant
Henrietta Martin, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant meets the eligibility requirement of categorical relatedness for SSI Related Medicaid by qualifying as a disabled person as defined by the Department.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2(A)
20 CFR 416.905 and 416.920
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2
20 CFR 404.1594 (b)(1)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Summary
- D-2 MRT Evaluation dated 01/30/06
- D-3 Report from [REDACTED] Health Clinic
- D-4 Pulmonary Function Test Results
- D-5 Social Summary
- D-6 General Physical from Dr. [REDACTED]
- D-7 Notes from [REDACTED] Medical Center
- D-8 MRT Decision with medical reports dated 11/01/04
- D-9 Notification Letter dated 02/15/06

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of SSI-Related Medicaid based on being found disabled by the Medical Review Team (MRT) in 2004. (D-8)
- 2) The case was due to be reevaluated by MRT in September 2005. Medical information was gathered and submitted to MRT on November 17, 2005. The MRT requested pulmonary function tests on the claimant. These were obtained and sent to MRT

January 25, 2006. On February 14, 2006 the decision was received by MRT that the claimant no longer met the criteria for a disability rating. (D-2) The decision was based on pulmonary tests completed 12/20/05. (D-3)

- 3) The claimant was sent a closure notice on 02/15/06. The letter reads in part: Your reevaluation for Medicaid has been denied effective 03/01/06. They found you not disabled by the Medical Review Team..... (D-9)
- 4) The claimant is 46 years of age and completed the 8th grade. He last worked in 2001 in Indiana. The work he has done over the years has been hard physical labor such as work in foundries and timber. The list of the claimant's ailments/complaints include trouble breathing – progressively getting worse, very bad back, trouble with right knee and right hip. Bad headaches. The claimant does not feel his condition has improved since being approved for Medicaid.
- 5) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in substantial gainful employment by reason of any medically determined physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death.
- 6) The State's definition of disability for Medicaid is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR 416.905.
- 7) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI; these are set forth in 20 CFR 416.920.
- 8) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.
- 9) The claimant is not employed.
- 10) The second sequential step is:

If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled.
- 11) The general physical from Dr. [REDACTED] dated 11/17/05 reads in part: Major Diagnosis: COPD and chronic back pain. Minor: ? Is applicant able to work full time at customary occupation or like work? No. Is applicant able to perform other full time work? No. Duration of inability to work full time – other. (D-6)

- 12) Pre Spirometry Report dated 12/20/05: Restrictive pattern (Mild) indicated by the reduction in FVC with preservation of the FEV1/FVC ratio. Patient understanding good, cooperation and effort good. Post Sporometry Report: Interpretation: Modified. Probably normal. The FVC, FEV1, and FEV1/FVC ratio are all within normal limits, however there is a reduction in the FEF 25%-75%. (D-3)
- 13) The general physical from Dr., [REDACTED] dated 10/19/04 reads in part: Major diagnosis: COPD and low back pain. Applicant is not able to work full time at customary occupation or like work. The applicant is not able to perform other full time work. Duration of inability to work full time: Other. (D-8)
- 14) Physician's Summary from [REDACTED] Health Center dated 08/12/04 (D-8) reads in part:
- Diagnosis: back pain, 04 back, central disc thoracic/lumbar spine, hypertrophic osteophyte ? spinous canal, ? space narrowing thoracic spine.
- Prognosis: Poor
- Length of Time Disability Is Expected to Last: Indefinite.
- Employment Limitation: Bending, lifting, stooping, carrying heavy loads.
- 15) CT Scan Results of 08/09/04 (D-8) read in part:
- Summary: Limited study because of the limitations of CT scan. Mild impingement into the spinous canal by hypertropic osteophytes from the facet joints at several locations. No bony abnormality or fracture. Mild bulging of central disk material in several instances of the thoracic and lumbar spines.
- Thoracic Spine: There are degenerative changes and degenerative disk disease throughout, especially so at T1 through 3,5,6,7, and the lower end, as well. It is difficult to determine where it is worse. Some indention on the lower end plate is noted in the body of what appears to be T6 a Schmorl's node. The swimmer's view reveals no abnormalities.
- 16) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that medical improvement is any decrease in the medical severity of your impairment which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).

VIII. CONCLUSIONS OF LAW:

- 1) The claimant has been a recipient of SSI-Related Medicaid based on disability for since 2004.

- 2) The 2004 decision from MRT was based primarily on the condition of the claimant's back and breathing problems. The medical evidence shows there has been no improvement in the condition of the claimant's back.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does meet the definition of disability. The Department is reversed in the decision to terminate the claimant's benefits under the SSI-Related Medicaid Program. The action described in the notification letter dated February 15, 2006 will not be taken. The case will be reevaluated in July, 2007 with a general physical.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of July, 2006.

**Margaret M. Mann
State Hearing Officer**