



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

May 30, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 24, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the SSI-related Medicaid Program.

In arriving at a decision, the State Hearings 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 Medicaid Program (SSI-Related) is based on current policy and regulations. One of these regulations specifies that 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 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 you do not meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to uphold the action of the Department to deny your application for the SSI-Related Medicaid Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Linda Burton, Dept. Hearing Rep.

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

____,

Claimant,

v.

Action Number: 06-BOR-1673

**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 May 24, 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 May 24, 2006 on a timely appeal, filed April 14, 2006.

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

II. PROGRAM PURPOSE:

The Program entitled 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
Linda Burton, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, 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 agency was correct in the action to deny the claimant's application for the SSI-Related Medicaid Program based on a disability.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHR-1 Copy of IG-BR-29.
- DHR-2 Copy of notification letter dated 3-30-06 (2 pages).
- DHR-3 Copy of notification letter dated 3-29-06 (3 pages).
- DHR-4 Copy of ES-RT-3 3-9-06 (2 pages).
- DHR-5 Copy of DFS-RT-2 dated 1-20-06 (2 pages).
- DHR-6 Copy of X-ray report and cervical spine report 2-24-06.
- DHR-7 Copy of General Physical report 1-18-06 (2 pages).
- DHR-8 Copy of certificate of eligibility.
- DHR-9 Copy of Social Summary dated 1-12-06 (3 pages).
- DHR-10 Copy of WV Income Maintenance Manual Section 12.2 A (2 pages).
- DHR-11 Copy of hearing summary.

Claimant's Exhibits:

- CI-1 Copy of medical reports (35 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was an applicant for the SSI-Related Medicaid Program. The information included in exhibit DHR-6, DHR-7 and DHR-9 included a report of X-ray and cervical spine, General Physical report, and a Social Summary Outline and was forwarded to the Medical Review Team, hereinafter MRT, on 3-9-06 to determine if the claimant met the definition of disability.
- 2) The MRT reviewed the claimant's medical documentation and determined that the claimant did not meet the definition of disability on 3-24-06. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

“Negative spinal films and after 12 years of back pain has no muscle atrophy or neuralgic deficit. The above does not qualify for Mao-D.”

- 3) On 3-30-06 and 3-31-06, the Department sent the claimant a Notice of Decision (Exhibits #DHR-2 and #DHR-3)) advising of the MRT's decision and the claimant requested a hearing on 4-14-06.
- 4) The claimant testified that he is currently a student at [REDACTED] University, that he has considerable back pain and has trouble sitting, standing or lifting, that he has worked as a business manager and worked with cars and computers.
- 5) The Physician's Summary (Exhibit #DHR-7) from Dr. [REDACTED] shows patient contact as 1-18-06 and gives diagnosis as "2 herniated lumbar, partial swollen right hand" and states that disability is expected to last "one year".
- 6) Report of RAD/Lumbar Spine and RAD/Cervical Spine dated 2-24-06 (Exhibit #DHR-6) gives summary as Lumbar Spine: "AP, lateral and oblique views of the lumbar spine were performed. Coned down view of L5/S1 level is also obtained. There are five non-rib-bearing lumbar vertebral bodies. Lumbar vertebral body heights and intervertebral disc space heights appear intact. There is no obvious evidence of spondylolysis or spondylolistesis". Cervical Spine: "AP, lateral, oblique and odontoid views of the cervical spine were performed. Cervical vertebral body heights and intervertebral disc space heights appear intact. There is no obvious evidence of ancient or recent cervical fracture. Neural foramina appear patent. Odontoid view is unremarkable".
- 7) The claimant presented reports (Exhibit #CI-1) which included several MRI's of the lumbar spine, the most recent which was 4-4-02 and gave a conclusion of "minimal left paracentral annulus bluge of the L2/3 disc and mild right paracentral annulus bulge or protrusion of the L3/4 disc. No definite evidence of neural impingement".
- 8) West Virginia Income Maintenance Manual ' 12.2 (A):
The definition of disability for Medicaid purposes is the same as the definitions used by SSA in determining eligibility for SSI or RSDI based on disability.
An individual who is age 18 or over is considered to be disabled if he is unable to engage in any substantial gainful activity due to 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.
- 9) The Federal definition of disability is found in 20 CFR ' 404.1505:
There is a five-step sequence of questions to be addressed when evaluating claims of disability, these are set forth in 20 CFR ' 404.1520.
 - (1) Is the person performing substantial gainful activity as defined in 20 CFR 404.1510?
 - (2) Does a severe impairment exist which is expected to last one year or result in death?
 - (3) If the person has a severe impairment, is the impairment a listed impairment under 20 CFR Part 404, Sub Part P, App. 1 or its medical equivalent?
 - (4) What is the person's Residual Functional Capacity (20 CFR 404.1545) and can that person still perform his or her former work?
 - (5) Can the person do any other work based upon the combined vocational factors of residual functional capacity, age, education, and past work experience? (20 CFR ' 404.1520f)

- 10) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations:
Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this duration requirement. (404.1509)

Your impairments(s) must be severe and meet the duration requirement before we can find you disabled. If you do not have any impairments or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience. (404.1520)

- 11) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations:
Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings, not only by your statement of symptoms. (404.1508)

VIII. CONCLUSIONS OF LAW:

- 1) The evidence submitted at the hearing identifies following: that the claimant (1) is not performing substantial gainful employment, (2) has a severe impairment that is expected to last for a continuous period of at least 12 months or result in death with documented diagnosis of back pain, (3) that this diagnosis does not meet the criteria listed in Section 1.00 of 20 CFR Part 404, Sub Part P, App. 1 or its medical equivalent, The final two (2) sequence of steps are not addressed since there is no finding of a severe impairment which meets the criteria of 20 CFR Part 404, Sub Part P, App. 1.
- 2) The claimant does not meet the definition of disability.

IX. DECISION:

It is the ruling of this Hearing Officer to uphold the action of the Department to deny the application for the SSI-related Medicaid Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of May, 2006.

**Thomas M. Smith
State Hearing Officer**