



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

July 10, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 7, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to close your SSI-related Medicaid Program case.

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 continue to meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **reverse** the proposal of the Department to close your SSI-Related Medicaid Program case.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
Brenda Bailey, Dept. Hearing Rep.

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 06-BOR-1970**

**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 7, 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 7, 2006 on a timely appeal filed May 24, 2006.

It should be noted that benefits have been continued pending the results of this hearing.

**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  
Brenda Bailey, 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 proposal to close the claimant's SSI-Related Medicaid Program case 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:**

- A Copy of hearing summary (2 pages)
- B Copy of verification checklist, OFS-RT-6 & OFS-RT-8 (10 pages).
- C Copy of medical reports and MRT decisions (65 pages).
- D Copy of denial letters (4 pages)
- E Copy of manual sections 12.10, 12.11, 12.12, & 12.13 (9 pages).

**VII. FINDINGS OF FACT:**

- 1) The claimant was a recipient of benefits under the SSI-Related Medicaid Program with a reevaluation of disability due in April, 2006. The information included in exhibit C included a General Physical report dated 3-21-06 from [REDACTED] M.D., a Physician's Summary along with reports from [REDACTED] M.D. dated 7-21-05 and 2-16-06, reports from [REDACTED] M. D. dated 3-31-05, 5-5-05, 7-14-05, and 10-27-05, a report from [REDACTED] M. D. dated 5-15-06, and report of X-rays of L-S spine and knees on 3-14-05. The documentation was forwarded to the Medical Review Team (MRT) 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 5-15-06 and again on 6-13-06 upon reconsideration. The ES-RT-3, Disability/Incapacity Evaluation, includes the following statement in Section III, E:

"No physical conditions per se noted that would meet a disability rating for MAO-D of one year."
- 3) On 5-18-06 and 6-15-06, the Department sent the claimant a Notice of Decision (Exhibit #D) advising of the MRT's decision.
- 4) The claimant testified that he has not worked since 1991, that Dr. [REDACTED] told him he had ulcerated colitis and irritable bowel syndrome, that he has had 3-4 operations on

his left knee and one (1) on his right knee, that he has no mobility and cannot bend his knees, that he has lower back pain, that he has stomach problems, and that he has carpal tunnel syndrome.

- 6) The General Physical report from Dr. [REDACTED] dated 3-21-06 gives major diagnosis as “O.A. knees” and minor diagnosis as “Deg. Lumbar disease” and states that the claimant is unable to perform customary occupation or like work and any other full time work for a period of one year.
- 7) The report of X-rays of L-S spine and knees dated 3-14-05 states that “right knee demonstrates no acute fractures or dislocations. Degenerative changes with mild joint space narrowing of the medial compartment of the femorotibial joint space with degenerative hypertrophic spurring is noted. Left knee demonstrates prominent degree of degenerative changes with narrowing of the medial compartment of the femorotibial and pannelofemoral joint spaces with associated degenerative hypertrophic spurring. There is evidence of loose bodies in the joint space”. The impression given is “prominent degree of osteoarthritic changes with loose bodies in the joint space”. The report also states that there are “mild degenerative changes of the lower lumbar spine”.
- 8) Report from Dr. [REDACTED] dated 2-16-06 gives impression as “bilateral carpal tunnel syndrome, right worse than left”.
- 9) Report from Dr. [REDACTED] dated 5-15-06 gives diagnosis as “Ulc. Colitis-diarrhea”.
- 10) 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.
- 11) 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)
- 12) 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)

- 13) 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? The State Hearing Officer finds that the claimant is not performing substantial gainful activity. The claimant meets this criteria.

(2) Does a severe impairment exist which is expected to last one year or result in death? The State Hearing Officer finds that the claimant has a severe impairment which is expected to last one year or result in death. The claimant meets this criteria.

(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?

The State Hearing Officer finds that the claimant's impairment related to his knees meets the criteria for a listed impairment under 20 CFR Part 404, Sub Part P, App. 1, Section 1.03A Arthritis of a major weight-bearing joint (due to any cause) defined as "Gross anatomical deformity of a hip or knee (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) supported by x-ray evidence of either significant joint space narrowing or significant bony destruction and markedly limiting ability to walk or stand." The report of x-rays clearly shows evidence of significant joint narrowing and states that the claimant has prominent degree of degenerative changes with narrowing of the medial compartment of the femorotibial and patellofemoral joint spaces with associated degenerative hypertrophic spurring". The claimant meets the criteria for a listed impairment. (It should be noted that since the State Hearing Officer finds that the claimant has a listed impairment related to his knees that the claimant's remaining impairments are not being addressed in relation to whether they qualify as listed impairments).

(4) What is the person's Residual Functional Capacity (20 CFR 404.1545) and can that person still perform his or her former work?

The State Hearing Officer finds that the claimant cannot perform his former work of coal mining. The claimant meets this criteria.

(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).

The State Hearing Officer finds that the claimant cannot perform any other work at this time based on combined vocational factors of poor residual functional capacity, age (51), education (12<sup>th</sup> grade), and past work experience which consists solely of coal mining. The claimant meets this criteria.

## **VIII. CONCLUSIONS OF LAW:**

- 1) The claimant has a severe impairment which meets the criteria as a listed impairment under 20 CFR Part 404, Sub Part P, App. 1, Section 1.03A.

- 2) The claimant meets the definition of disability as he is unable to perform substantial gainful employment for a continuous period of not less than 12 months.

**IX. DECISION:**

The evidence and testimony received at the hearing clearly show that the claimant meets the definition of disability for the SSI-related Medicaid Program. Therefore, the State Hearing Officer is reversing the Department's action to close the SSI-related Medicaid Program case. Reevaluation will occur in April, 2007.

It is the ruling of this Hearing Officer to **reverse** the proposal of the Department to close your SSI-Related Medicaid Program case.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 11th Day of July, 2006.**

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**Thomas M. Smith**  
**State Hearing Officer**