



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

March 20, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 23, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under 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
Susan Godby, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-6237

**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 February 23, 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 February 23, 2006 on a timely appeal, filed July 15, 2005. It should be noted that this hearing was originally scheduled for September 13, 2005. The hearing was continued as the Department was resubmitting the case to the Medical Review Team for reconsideration. The State Hearing Officer was notified on January 26, 2006 that the Department had received MRT's decision. The hearing was rescheduled for February 23, 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
Susan Godby, 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 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 07/13/05
- D-3 Sections 12.2 & 16.9 of the West Virginia Income Maintenance Manual
- D-4 Copy of MRT decision
- D-5 Copy of MRT Packet
- D-6 Copy of additional medical statement not submitted to MRT
- D-7 Copy of Department's Summary

VII. FINDINGS OF FACT:

- 1) The claimant was in the office on 03/04/05 to complete a Medicaid review. A general physical was requested. Once this was received the case was sent to the Medical Review Team for review on 04/19/05. A psychiatric report was requested by MRT. This was completed and sent to MRT on 06/01/05. A decision was received from MRT stating the claimant was not disabled.
- 2) The claimant was sent a closure notice on 07/13/05. The letter reads in part: Your SSI Related Medicaid will stop. You will not receive this benefit after July 2005. Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage. (D-2) A hearing was request was received on 07/15/05.

- 3) The claimant is 51 years of age and completed the 12th grade. Most of his past work was driving large trucks. He last worked in 1998. His ailments/complaints consist of pinched nerve in the back and neck, prostate trouble, high blood pressure, depression, and restless leg syndrome. He has been receiving Medicaid since the late 1990's.
- 4) 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.

- 5) 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.
- 6) 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.
- 7) 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.

- 8) The claimant is not employed.
- 9) 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.

- 10) The Psychiatrist's Summary from Dr. [REDACTED]'s office reads the claimant is not disabled psychiatrically.
- 11) The psychiatric report dated 05/04/05 from Dr. [REDACTED] For ____ " ____" _____ reads in part:

Mental Status Evaluation: ____ is alert and oriented in all spheres. His affect is slightly anxious. His mood is somewhat depressed. He has no suicidal or homicidal ideation. His speech is fluent and goal directed. His thoughts are clear. There is no evidence of perceptual disturbances, hallucinations, or delusions. They are somewhat concrete. He attends well to the conversation. His memory in both the long and short term area appears to be intact. He is estimated to be of low average to borderline intelligence, given his fund of information and verbal skills. He has limited insight into his difficulties and his judgment is mildly impaired.

Diagnosis:

AXIS I: Pain Disorder with Physical and Psychological features.
Generalized Anxiety Disorder with Panic Episodes.
Dysthymic Disorder

AXIS III: History of hydrocephaly with result in headaches, degenerative disk disease with back pain, hypertension, peptic ulcer disease, history of seizures, Barrett's esophagitis.

AXIS IV: Chronic mental illness, chronic physical health concerns, limited support system,history of marital conflict, history of substance abuse.

AXIS V: GAF of 35.

- 12) The general physical completed 02/14/05 by Dr. [REDACTED] reads in part that the claimant cannot work full time at customary work or occupation. On medication for pain – cannot drive commercial vehicle. Perform other full-time work – depends on neurological and psychiatric evaluations. Limited to light work – maximum lifting of 20 pounds – frequent lifting of 10 pounds. Should avoid driving, lifting > 20 lbs., climbing ladders, strainful situations. Duration of inability to work full-time: Never.
- 13) Statement from Dr. [REDACTED] dated 02/15/06 reads in part they have been treating the claimant since February 2005 for Severe Lumbar and Cervical DJD, Cephalgia, Sleep Cycle Disturbance and Restless Leg Syndrome.While the patient appears to receive some benefit from these therapies it is our opinion he continues to require the therapies in order to achieve maximum benefit toward resolution of symptoms.
- 14) Report from Dr. [REDACTED] dated 08/10/05 reads in part that neurological examination shows no neuro deficit. No radiculopathy. The patient's chief complaint was low back pain. He also complains of on and off neck pains at times extending to the right upper extremity.

Cervical MRI on 06/23/05 which reported multi-level spondylosis enough to explain his chronic cervical strain. Lumbar MRI on 03/25/05 which showed degenerative disc diseases at L3-4 and L5-S1 which makes him vulnerable to low back pain.

Impression: Chronic lumbar sprain. Co-morbidities: 1. Degenerative disc disease L4-5; L5-S1. 2. Chronic cervical strain. 3. Hypertension. 4. Depression. 5.

Hydrocephalus-post shunt 3 times 1986. Recommendation: Feels conservative, non-surgical treatment would be the better option. This should include initial drastic reduction in activity to minimize aggravating the problem. If the patient can take anti-inflammatory agents, they have proven beneficial.Physical support, such as a brace, provides comfort and hastens improvement in many cases.If pain is intractable and overwhelming, a consultation at a multi-disciplinary comprehensive pain program to tap on their expertise on pain medications and pain procedures. Socio-economic concerns and nonorganic medical syndromes must be resolved before any meaningful relief is expected. A change in lifestyle may be in

order to adjust to the physical limitations.

- 15) The claimant was evaluated for back pain, headaches and dizziness by Dr. [REDACTED] 03/23/04. Assessment: Chronic low back pain, intermittent lower extremity pains, chronic headaches, intermittent dizziness, history of aquaductal stenosis, status post shunt placement several years ago, intermittent burning of the feet.

Neurologic: Reads in part Motor Exam shows normal muscle bulk and tone all over. No drift. Strength testing is 5/5 in all groups of muscles in upper and lower extremities. There is no tremor, fasciculation or any other involuntary movement noted. Sensory exam intact to LT/PP/T all over body. Vibration and proprioception is intact. Cortical sensations such as graphesthesia, stereognosis is also intact, no neglect or right, left confusion. There is no sensory extinction to double simultaneous stimulus. Crebeller exam is normal to heel shin, F-N testing. There is no rebound, dysmetria or past pointing noted. DTR are brisk and symmetrical, including ankle jerks. Toes are down going. Gait is normal based on good arm swings. Tandem gait is normal. Romberg is negative.

- 16) The Medical Review Team found the claimant disabled – SSI-Related Medicaid Age 18 or over in a decision dated April 29, 2004.
- 17) General physical completed 02/14/03 by Dr. [REDACTED] reads in part that the applicant can do light work. Should avoid driving long distance, lifting, prolonged standing or sitting. Is not able to work full time at customary occupation or like work or other full time work. Duration of inability to work full time: Never.
- 18) The Medical Review Team found the claimant disabled – MAO Age 18 or over in a decision dated March 5, 2003.
- 19) General physical dated 02/26/02 limits claimant to sedentary work.
- 20) Physician's Summary dated 12/11/00 reads in part that the diagnoses peripheral vestibulopathy, aqueductal stenosis, osteoarthritis, Barrett's esophagitis. Employment Limitations: Cannot operate equipment, cannot stand, walk, or sit for greater than 1 hour at a time.
- 21) There are decisions from the Medical Review Team dated 03/08/2002 and 01/22/2001 finding the claimant disabled – MAO Age 18 or over.
- 22) There is a lot of old medical in the packet dating from as early as the early 1980's.
- 23) 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 several years.
- 2) The medical evidence shows there has been no improvement in the claimant's condition.

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 July 13, 2005 will not be taken. The case will be reevaluated in March, 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 20th Day of March, 2006.

**Margaret M. Mann
State Hearing Officer**