



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 4, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 29, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid based on disability not determined.

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 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 action of the Department in denying your application for SSI-Related Medicaid.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Dan Pyles, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6249

**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 September 29, 2005 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 September 29, 2005 on a timely appeal, filed July 5, 2005.

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
Dan Pyles, DHHR

Presiding at the Hearing was Sharon K. Yoho, 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 their action to discontinue the Claimant's SSI-Related Medicaid benefits based on disability not being met.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545 – 404-1599 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Disability/Incapacity Evaluation dated May 25, 2005
- D-2 Memo to Medical Review Team dated May 23, 2005
- D-3 Social Summary Outline dated April 25, 2005
- D-4 General Physical dated April 25, 2005
- D-5 WV Income Maintenance Manual Chapter 12
- D-6 Disability/Incapacity Evaluation packet dated July 23, 2004

VII. FINDINGS OF FACT:

- 1) Mr. _____ is an active SSI related Medicaid client. His original application was approved in July 2004 after the Department's Medical Review Team made a determination that the claimant was disabled. The Department was completing a reevaluation of Mr. _____'s eligibility in April 2005.
- 2) The Department submitted an updated Physician's Summary and Social Summary to the Medical Review Team (MRT) on May 23, 2005.
- 3) The updated Physician's Summary, (DFA-RT-5), reported that the claimant continues to have a herniated nucleus pulposus in lumbar region, recurrent dislocation of left shoulder and torn cartridge of the right knee all of which was included in the original medical information sent to the Medical Review Team in the year 2004.
- 4) The Physician noted on the updated DFA-RT-5 that Mr. _____ has chronic back, left shoulder and right knee pain. He also reported that the claimant is unable to work full time in his customary occupation and is unable to perform other full time work.
- 5) The Physician reports that Mr. _____ should avoid lifting, prolonged standing and prolonged sitting. He also reports that the claimant's inability to work full time is expected to last one year.
- 6) MRT reviewed the Claimant's updated medical documentation and determined on May 25, 2005 that the Claimant no longer met the definition of disabled. The ES-RT-3, Disability / Incapacity Evaluation, indicates that the client's impairments do not

significantly limit his ability to perform basic work activity. The Medical Review team made the following notation on the ES-RT-3:

“DFA-RT-5 of 5/17/05 does not reveal disabling conditions. The above does not qualify for MA0-D.”

- 7) Mr. _____ has not worked for many years following an injury on the job that occurred in the year 1999. He is a High School Graduate whose job experience is in Heating and Air Condition.
- 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)

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 § 404.1599 Code of Federal Regulations, Listing of Impairments:
Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

Loss of function: Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months.

VIII. CONCLUSIONS OF LAW:

- 1) Policy states that disability is established if the client is unable to engage in any substantial gainful activity and the condition is to last not less than twelve (12) months. The evidence submitted at the hearing does support that the claimant has an impairment that is expected to last for a continuous period of at least 12 months.
- 2) Using the five-step sequence of questions outlined in Federal Regulations (20 CFR § 404-1505) to determine disability, a conclusion of disability is found.
 1. The claimant is not performing substantial gainful activity.
 2. He does have a severe impairment that is expected to last one year.
 3. His impairment is a listed impairment under Federal Regulations (20 CFR § 404-1599)
 4. He cannot perform his former work.
 5. He cannot do any other work.
- 3) Mr. _____'s musculoskeletal impairments prevent him from sustained ambulation and gross motor movements due to pain associated with the underlying musculoskeletal impairments. This limitation is expected to last 12 months. Federal Regulations identifies this extent of limitation to be a loss of function. A Physician has instructed the claimant to avoid lifting and to avoid prolonged standing or sitting. It is reasonable to believe that these limitations would severely reduce capacity for work activities.

IX. DECISION:

The testimony received at the hearing clearly indicates that the claimant meets the requirements necessary to establish disability for the purpose of the Medicaid Program. The Department failed to provide justification for their determination that this claimant is no longer disabled when his physical condition has clearly not improved.

It is the ruling of this Hearing Officer to **reverse** the action of the Department to discontinue SSI-Related Medicaid benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 4th Day of January 2006.

**Sharon K. Yoho
State Hearing Officer**