



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

February 21, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 6, 2006. Your hearing request was based on the Department of Health and Human Resources' determination that you are no longer disabled for purposes of 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 SSI-Related Medicaid Program 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 Department's proposal to terminate your SSI-Related Medicaid based on medical eligibility. The Department may complete a medical reevaluation at any time but no later than February 2007.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Debra Parker, ESW, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-6559

**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 21, 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 January 6, 2006 on a timely appeal, filed August 25, 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
_____, Claimant's mother
_____, Claimant's father
Debra Parker, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 continues to meet the medical eligibility criteria necessary to qualify as disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545 & 20 CFR ' 404.1594, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Social Summary Outline dated 6/10/05
- D-2 WVDHHR Medical Review Team Transmittal Memorandum dated 8/31/05
- D-3 Claimant's medical records submitted to MRT in August 2005 and the ES-RT-3 (Disability / Incapacity Evaluation) signed by the MRT August 8, 2005.
- D-4 WVIMM 12.2 (Definitions of Disability and Blindness)
- **D-5 Notice of Decision advising of Medicaid denial dated 8/22/05.
- **D-6 Claimant's medical records and ES-RT-3 (Disability / Incapacity Evaluation) from the Claimant's most recent favorable medical decision signed by MRT on 9/15/04.

** Indicates that information was received subsequent to the Hearing.

VII. FINDINGS OF FACT:

- 1) The Claimant is an active recipient of SSI-Related Medicaid resulting from a favorable disability determination (exhibit D-6) from the Medical Review Team, hereinafter MRT, on September 15, 2004. The ES-RT-3, Disability / Incapacity Evaluation form, completed by the MRT notes under section IV.C., that the client's impairment(s) meets or equals the listing of impairments. Section VI.A., indicates that the case must be reevaluated in September 2005.
- 2) In accordance with the September 2005 reevaluation date recommended by the MRT, the Claimant's Worker forwarded exhibits D-1 (Social Summary Outline), D-2 (Medical Review Team Transmittal Memorandum, and D-3 (the Claimant's medical records) to the MRT for a reevaluation of the Claimant's disability.
- 3) The MRT responded on an ES-RT-3 Disability / Incapacity Evaluation (D-3) dated August 8, 2005, which states under section IV.E. "DFART-5 of 7/11/05 does not reveal any disabling conditions. The above does not qualify for MAO-D."

- 4) The Claimant was notified of the results of his SSI-Related Medicaid reevaluation in a Notice of Decision dated August 22, 2005. This notice states, in pertinent part.

Action: Your SSI Related Medicaid for the Aged, Blind and Disabled will stop. You will not receive this benefit after August 2005.

Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage.

- 5) Exhibit D-6, Medical documentation and ES-RT-3 (Disability/Incapacity Evaluation) that resulted in a favorable disability finding by the MRT on September 15, 2004, indicates that the Claimant met or equaled the listing of impairments.

The medical documentation included in this packet indicates that the Claimant's disability was based on the medical signs, symptoms and laboratory findings related to his diagnosis of Hyperesthesia - The Claimant's skin and nerves in his chest area were reported to be extremely sensitive and painful to the touch.

The General Physical (Adults) form (7/23/04) indicates under section "C" that the Claimant suffers from esophageal stricture, hyperesthesia, and anxiety and depression. Section "D" reports pain is "Neurological pain in chest" and section "E" provides a major diagnosis of hyperesthesia and a minor diagnosis of depression. Section "F" reveals that the Claimant is unable to work full time at customary occupation or like work. Although the physician indicates in section F-2 that it was possible the Claimant could perform other full time work, work situations that should be avoided include jobs that require the use of his arm. The duration of inability to work is one year.

The DFA RT-8A was completed upon the request of the MRT. This document, included in exhibit D-6, reveals that the Claimant's diagnosis is Esophagus Restriction, Hyperesthesia and Depression. His prognosis is listed as fair and his disability is expected to last 12 months. Employment limitation states - "Not able to work."

- 6) In section IX (Reasons for applying) of exhibit D-1 (Social Summary Outline) dated June 13, 2005, the Claimant reported that he wears morphine patches for pain as he can hardly wear a shirt. He can't stand anything against his skin in the chest area and several doctors, including Dr. [REDACTED] a neurologist, diagnosed him with nerve damage. The Claimant also reported that Dr. [REDACTED] thinks his symptoms may be from a cervical disc.
- 7) Medical documentation found in exhibit D-3 is consistent with the Claimant's persistent reports of skin sensitivity and pain in the chest area. The DFA-RT-5 completed by [REDACTED] D.O. presents a diagnosis of Hyperesthesia in section C-12, and in section E - Diagnosis Major. Section F-1 indicates that the Claimant is unable to perform customary occupation or like work. Section F-2 states that the Claimant is unable to perform other full time work and the duration of the inability to work full time is "other" - "Indefinite - no treatment has alleviated symptomatology [sic] over past five years."

- 8) The Claimant testified that his condition has not improved. He stated that he has unsuccessfully tried several different types of medication therapies to relieve his pain but nothing has worked. He stated that he goes without a shirt when the weather is warm, and while he must wear a shirt in the winter, he holds it away from his chest with one of his hands. He stated that he still cannot work with his current symptoms.
- 9) 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.
- 10) 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)
- 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) 20 CFR ' 404.1594 (b)(1) Code of Federal Regulations:
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's most recent favorable disability determination occurred in September 2004. The Claimant was found to be disabled based on his medical condition resulting from a diagnosis of Hyperesthesia. At that time, the MRT determined that the Claimant met or equaled the Listing of Impairments.
- 2) The Code of Federal Regulations state that medical improvement is any decrease in the medical severity of the Claimant's 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).
- 3) The Social Summary Outline and the medical information submitted for the September 2005 medical reevaluation is consistent with the Claimant's most recent favorable finding. The Claimant continues to report severe pain and sensitivity of the skin and nerves in the chest area. The Claimant's medical condition is supported the medical documents submitted by his treating physician, and more importantly, the Department has failed to cite improvement in symptoms, signs and or laboratory findings, fails to support an unfavorable finding on the Claimant's behalf.
- 4) The Department has failed to follow regulatory requirements in determining that you are not disabled.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** the Department's proposal to terminate your SSI-Related Medicaid benefits based on medical eligibility. The Department may complete a medical reevaluation at any time but no later than February 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of February 2006.

**Thomas E. Arnett
State Hearing Officer**