



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

April 3, 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' action to deny your application for the 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 not meet the above stated definition.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your application for 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-6728

**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 March 22, 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 September 29, 2005.

This hearing was originally scheduled for December 6, 2005. It was continued at the Department's request in order for the case to be submitted to the Medical Review Team for reconsideration. At the conclusion of the hearing on February 23, 2006, the Department was instructed by the State Hearing Officer to once again resubmit the case to MRT for reconsideration after the claimant had a general physical. The decision by MRT was received by the State Hearing Officer on March 22, 2006.

It should be noted here that the claimant's benefits have been denied.

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 404.1508, 404.1509, & 404.1520 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letters dated 09/26/05 & 10/03/05
- D-3 Copy of section 12.2 of the West Virginia Income Maintenance Manual
- D-4 Copy of MRT Decision dated 10/05/05
- D-5 Copy of MRT Packet
- D-6 Copy of Department's Summary
- D-7 Copy of MRT Decision/Packet dated 03/15/06

Claimant's Exhibits:

- C-1 Request for consultation from Dr. [REDACTED] dated 08/19/04
- C-2 Bill for Emergency Room visit at [REDACTED] Medical Center 01/05/05
- C-3 Statement from [REDACTED] County Health Center dated 02/09/06
- C-4 Medications Listing
- C-5 Letter from Social Security Administration dated 06/18/05
- C-6 Notes from [REDACTED] Medical Center dated 08/11/05
- C-7 Statement from [REDACTED] Health Center dated 01/15/06
- C-8 Statement from [REDACTED] Medical Center dated 08/11/05
- C-9 Emergency Room Notes dated 01/05/05
- C-10 Emergency Room Notes dated 08/11/05

VII. FINDINGS OF FACT:

- 1) The claimant applied for SSI-Related Medicaid based on a disability 06/23/05. The medical packet was submitted to the Medical Review Team (MRT) on 07/11/05. A psychological report was requested by MRT and was submitted on 08/31/05. A decision was received on 09/26/05 stating that the claimant did not meet the definition of disability.
- 2) The claimant was sent a denial notice on 09/26/05 and 10/03/05. (D-2) A hearing was requested on 09/29/05.
- 3) The claimant is 32 years of age and has his GED. He has had vocational training in small engine repair and auto mechanics. He has not worked anywhere the past two years. His past work has consisted of a lot of small engine repair work. He has also worked at night time security.
- 4) On 10/05/05 the Medical Review Team issued a decision based on reconsideration of the claimant's case. They found the claimant is not mentally disabled – “Ct is diagnosed Agoraphobia without Panic Disorder, Alcohol Dependence in remission, Cannabis Abuse & Depressive Disorder NOS. Ct displays moderate functional limits as a result of mental impairments which would not prevent work activities.” The MRT also found the claimant not disabled. “OFS-RT-8 dated 1/10/05 indicates client is not disabled. Psychological evaluation does not indicate inability to work. The above does not qualify for MAO-D, 1 yr.” (D-4)
- 5) The case was submitted to MRT for reconsideration after the hearing was held. The finding by MRT on 03/15/06 was the claimant is not mentally disabled. “There is no new mental information. Past eval showed average intellect, agoraphobia, depressive disorder NOS, Alcohol dependence in remission, cannabis abuse. Functional limits would not prevent work performance.” The claimant is not disabled. “Clinical records do not reveal the presence of a covered disability condition.” (D-7)
- 6) 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.
- 7) 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.
- 8) 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.

9) 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.

10) The claimant is not employed.

11) 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.

12) The general physical completed 02/08/06 reads in part: Major Diagnosis – Tooth abscess. Minor Diagnosis – (R) Maxillary Mucous Retention. Is applicant able to work full time at customary occupation or like work – yes. Needs to see dentist or a surgeon first. Duration of inability to work full time – needs to be determined by surgeon.

13) The claimant was treated at [REDACTED] Medical Center ER 01/05/05 for drainage from a back tooth as well as facial swelling. CT scan of his sinuses show a left ethmoidal frontal sinus as well as maxillary sinusitis. There is also some sphenoid sinusitis noted. Diagnosis: 1) Sinusitis left. 2) Dental abscess left.

14) Physician's Summary dated 01/10/05 reads the prognosis is fine if the claimant gets dental care. Not disabled. Employment limitation: None relating to visits there.

15) Psychological evaluation completed 08/24/05 reads in part:

On the Wechsler Adult Intelligence Scale-Third Edition, the client obtained a Verbal IQ score of 91. A Performance score could not be obtained since only three subtests were given. Also a Full Scale score was not obtained. Test results indicate verbal reasoning falling in the Average range. Short-term memory skills appear to be adequate. Math skills are adequate for managing financial affairs. Attention span and ability to concentrate were adequate for testing. Test results indicate the client is able to pronounce words he reads on a post high school level. Math skills fall on a seventh grade level.

The client reported no hallucinations or delusions. He stated that he has been paranoid since he got out of jail. He stated he sometimes has suicidal thoughts. It bothers him to be around people.Sometimes he will hear noises and go out around he yard to see if anyone is there. He stays at home except for appointments. He reports no homicidal thoughts.His affect was restricted. He reported he has good and bad days. He worries a lot and has difficulty sleeping.

Diagnoses:

Axis I: Agoraphobia without Panic Disorder.
Alcohol Dependence in Sustained Full Remission
Cannabis Abuse
Depressive Disorder NOS

Axis II: Borderline Personality Disorder

- 16) The claimant was treated for a talar avulsion fracture – right ankle at [REDACTED] Medical Center 08/11/05.
- 17) 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)

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 impairment(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)

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that the claimant must have a severe impairment which has lasted or can be expected to last one year or result in death.
- 2) The medical evidence presented in this case does not support the above requirement.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not meet the definition of disability. The Department is upheld in the decision to deny the claimant's 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 3rd Day of April, 2006.

**Margaret M. Mann
State Hearing Officer**