



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 12, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under 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 proposal of the Department to terminate 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
[REDACTED] Attorney at Law
Henrietta Martin, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-6745

**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 December 12, 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 November 29, 2005 on a timely appeal, filed October 3, 2005. The record was left open until December 12, 2005 in order for the claimant's attorney to submit a closing argument. This closing argument was not received by the State Hearing Officer.

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
_____, Claimant's Spouse
██████████ Claimant's Attorney
Henrietta Martin, Department Hearing Representative

Observing:

Erika H. Young, Chairman, Board of Review

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 Department's Summary
- D-2 Disability/Incapacity Evaluation dated 08/11/05
- D-3 Medical from Dr. ██████████
- D-4 Additional Medical in MRT Packet
- D-5 Notification Letter dated 09/06/05

Claimant's Exhibits:

- C-1 Gastroenterology Consultation Report dated 11/02/05
- C-2 Notes from Dr. ██████████ dated 09/14/05

VII. FINDINGS OF FACT:

- 1) The claimant applied for Medicaid based on disability 04/07/05. On 09/02/05 the worker

received the Medical Review Team (MRT) decision that the claimant was not disabled. (D-2) Instead of doing a denial on the application, the worker approved the application due to looking at the wrong section marked by MRT.

- 2) The claimant was sent a notice dated 09/06/05 informing him that his SSI-Related Medicaid for the Aged, Blind and Disabled would stop effective September 2005. Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage. (D-5) The claimant requested a hearing 10/03/05.
- 3) The claimant is 50 years of age and has a high school diploma but did not do well in school. When he gets letters, his wife reads them to him. His past work consists primarily of working in the coal mines mining low coal.
- 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 MRT had determined the claimant did not meet the above requirement. The decision reads: "DFART-8a of 6/8/05 does not reveal any disabling conditions. No other disabling conditions noted. The above does not qualify for MAO-D." (D-2)
- 11) The DFA-RT-8a completed by Dr. [REDACTED] dated 06/08/05 reads in part:

Diagnosis: CAD - Angina pectoris, COPD

Prognosis: Fair

Length of Time Incapacity/Disability is Expected to Last: I can't tell!

Employment Limitations: Has moderate ? & moderate COPD due to coal workers ? - gets short of breath & lots of chest pain.

The notes on the same date read in part that patient has had some chest pain lately but is not severe. His sleep has improved with Alprazolam. BP: 118/74, P-68, WT. – 271 lbs., Lungs – clear, Heart: R&R, no murmurs or gallops, Abdomen – negative, extremities – no edema. Plan: Continue taking the same medication and come back in 3 months.

- 12) Notes from Dr. [REDACTED] dated 03/03/05 read in part that the patient reports that he has not had much chest pain since his Cardiac Catheterization on February 24, 2005. Patient had only a moderate lesion in the LAD.
- 13) Notes from Dr. [REDACTED] dated 11/10/04 reads in part:

Assessment: Non-cardiac chest pain, hyperlipidemia, COPD.
- 14) Radiology report dated 11/18/04 reads in part that this is an abnormal cardiac related response to stress with mild degree of ischemia of the inferior wall with fixed defect also suggestive of old infarction and mild degree of ischemia. The left ventricular systolic ejection fraction is estimated to be 56%. There is hypokinesis of the inferior wall seen.
- 15) Chest XR dated 02/23/05 reads in part no active disease seen.
- 16) The general physical completed by Dr. [REDACTED] dated 04/27/05 states claimant cannot work because of back pain. Should avoid lifting.
- 17) Diagnoses listed on report from Dr. [REDACTED] dated 11/01/05 are 1) Abdominal pain, unspecified site – Status: current. 2) Unspecified esophagitis – Status: current. 3) Unspecified gastritis and gastroduodenitis, without mention of hemorrhage – Status: current. 4) Hernia, diaphragmatic, without mention of obstruction or gangrene – Status: current. 5) Personal history of colonic polyps – Status: current.
- 18) Notes from Dr. [REDACTED] dated 09/14/05 reads in part that the assessment is CAD angina pectoris and COPD. The claimant had reported a couple of chest pains lately, one of them was very severe. Plan: Continue taking same medications and come back the next day for a CST.
- 19) The rest of five-step sequence of questions (See #7 and #9 above) to be addressed when evaluating claims of disability as set forth in 20 CFR 404.1520 are:

(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)

20) 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) Regulations are clear that in order to qualify as disabled, an individual must suffer a severe impairment and this impairment must have lasted or are expected to last for a continuous period of 12 months. A severe impairment is defined as an impairment which significantly limits an individual's physical or mental ability to do basic work activities. An individual who is 18 years of age or over is considered disabled if that person is unable to engage in any substantial gainful activity as a result of such impairment.
- 2) The medical documentation does not support the requirement that the claimant must meet the definition of disability.

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 terminate the claimant's benefits under the SSI-Related Medicaid Program. The action described in the notification letter dated September 6, 2005 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 12th Day of April, 2006.

**Margaret M. Mann
State Hearing Officer**