



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
January 9, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 30, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for medical coverage under Medicaid.

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 Medicaid program (SSI-Related) is determined based on current 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 last for a continuous period of not less than twelve months. [West Virginia Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at the hearing revealed that your condition fails to meet criteria necessary to establish disability for purposes of the Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the agency to deny Medicaid coverage as set forth in the May 19, 2005 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Susan Hinzman, ESS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

Claimant,

v.

Action Number- 05-BOR- 6855

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 9, 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 originally convened on November 30, 2005 on a timely appeal filed June 6, 2005.

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources. SSI- Related Medicaid 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

_____, spouse

Susan Hinzman, ESS, Agency Representative

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant meets the medical eligibility requirement necessary to qualify as a disabled individual for purposes of the (SSI- Related) Medicaid Program?

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2(A)
20 CFR § 404.1505 - 404.1545, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

D-1 - Medical Social package and final MRT decision of 11/8/05
D-2 - Notification, 5/19/05
D-3 - WVIMM policy

VII. FINDINGS OF FACT:

- 1) The claimant requested a hearing June 6, 2005 in response to a May 19, 2005 notification of Medicaid denial. The agency's Medical Review Team had found the claimant not medically eligible for the program based on "length of disability".
- 2) This request was received by this examiner June 17, 2005 with notation of an agreement between the agency and the claimant to delay scheduling of the hearing pending resubmission, with updated medical information, to the agency's Medical Review Team. E-Mail from agency received October 12, 2005 to schedule a hearing. A hearing was convened November 30, 2005.
- 2) During the hearing, Exhibits D-1 through 3 were submitted.
- 3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.
- 4) Testimony reveals that the claimant was injured March 18, 2005 and was hospitalized March 18 through 22. He returned to work fulltime (80 hours every 2 weeks) in June 2005. He returned to work against Dr's orders. He couldn't afford to be off work longer.

5) 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.

6) 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)

VIII. CONCLUSIONS OF LAW:

1) There is a five-step sequence of questions to be addressed when evaluating disability.

2) The first question to be answered: Is the person performing substantial gainful activity? The claimant is currently employed full time at 40 hours per week. He returned to such employment June 2005.

3) The second question to be answered: Does a severe impairment exist which is expected to last one year or result in death? Evidence reveals that the claimant's impairment which rendered him unable to perform his previous employment lasted only from the date (March 18, 2005) of his injury to when he returned to work (June 2005 - a period of less than 12 months. Disability cannot be established as the "duration" requirement of 12 months was not met.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, the determination of the Agency as set forth in the May 19, 2005 notification is **upheld**. Testimony and evidence fail to establish, within the meaning of the law, the claimant's medical eligible for participation in the Medicaid Program currently or during the period he was off work. Evidence reveals the "duration requirement" was not met- a severe impairment must prevent substantial gainful activity (employment) for a period of 12 months.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 9th Day of January , 2006.

RON ANGLIN
State Hearing Examiner