



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

May 22, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 5, 2006. 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 your 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  
Marcia Waselchalk, DHHR

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6990**

**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 January 13, 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 5, 2006 on a timely appeal, filed November 22, 2005.

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

Marcia Waselchalk, 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

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Request dated 11/20/05
- D-2 Form IG-BR-29, Hearing/Grievance Record Information
- D-3 Statement of case closure
- D-4 Notification Letter dated 11/10/05
- D-5 Copy of West Virginia Income Maintenance Manual Sections 12.2 & 16.9
- D-6 MRT Packet dated 10/19/05
- D-7 MRT Packet dated 06/07/05
- D-8 Electronic Mail Message from Marcia Waselchalk dated 01/17/06

**Claimant's Exhibits:**

- C-1 X-Ray Report from [REDACTED] Physicians Inc.

**VII. FINDINGS OF FACT:**

- 1) The claimant is a recipient of SSI-Related Medicaid based on a disability. The claimant was approved for surgery in a medical packet dated 06/07/05. (D-7) The case was to be reevaluated in 09/05. The medical packet was submitted to the Medical Review Team (MRT) on 10/18/05 for a reevaluation requested by MRT. A decision was received from MRT 11/09/05 which stated the client is not disabled. (D-6)
- 2) The claimant was sent a termination notice on 11/10/05. (D-4) A hearing was requested on 11/22/05. (D-1)

- 3) The hearing record was left open until 01/12/06 for some additional medical information to be provided by the claimant. The claimant did not provide any additional information. (D-8)
- 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) A statement from [REDACTED] PA-C, dated 06/01/05 reads in part that the patient is currently being treated at my office for chronic low back pain with herniation of a disk (sic) with spinal stenosis and encroachment at the L4-L5 level. She also experiences dysmenorrheal, with uterine fibroids which she will be undergoing a hysterectomy in mid June. With the combination of Lumbar Disc Disease and impending hysterectomy as well as her educational commitment, I believe this patient will be unable to work for the next 1 year.
- 11) Report from [REDACTED] Center dated 05/21/03 reads in part:

Lumbar Spine: The lumbar spine demonstrates significant degenerative disc disease L5-S-1 with disc space narrowing. Facet arthrosis and hypertrophy. Prominent hyperostotic change L5 - S1.

Cervical Spine: The cervical spine demonstrates reversal of the normal cervical spine curve. Vertebral body heights and disc spaces appear to be maintained.

MRI Cervical Spine: Magnetic resonance imaging of the cervical spine carried out in the sagittal and axial plane utilizing T1 and T2 weighted images. No evidence for disc herniation or spinal canal stenosis. There is mild hypertrophic bony change particularly apparent in the region of C3-4, C4-5, and C5-6. Impression: Spondylosis with some hyperostosis without evidence for disc herniation or spinal canal stenosis.

MRI Lumbar Spine: Prominent degenerative disc disease L4-5 and L5-S1. Lateral recess narrowing L4-5 and L5-S1. Broad based bulge L4-5 and L5-S1. Neural foraminal encroachment L4-5 and L5-S1. No evidence for focal disc herniation.

- 12) Physician's Summary from [REDACTED] dated 09/20/05 reads in part:

Diagnosis: GERD, Chronic LBP, mild; recent TAH, Bladder repair & surgical complications.

Prognosis: Good

Length of Time Incapacity/Disability is Expected to Last: 6 months.

Employment Limitations: Currently no lifting, no pulling, pushing. This should improve monthly.

- 13) Statement from Dr. Fort dated 08/08/05 reads in part that this letter is in regard to Ms. \_\_\_\_\_ who will require surgery on August 19, 2005 to repair a vesica vaginal fistula.

She will most likely be in the hospital for at least 3-4 days and require an additional 6 weeks of recuperation prior to being able to go back to work.

- 14) X-Ray report dated 11/22/05 reads in part:

Lumbar Spine: The alignment is within normal limits. Intervertebral disc space narrowing is seen at L5-S1 with subchondral sclerosis and osteophyte formation. These changes are degenerative. Sclerosis is seen within the lower facet joints.

- 15) Testimony at the hearing revealed that the claimant is a college student expecting to graduate this summer in medical assistance administration. She had not applied for SSI or RSDI benefits.

## **VIII. CONCLUSIONS OF LAW:**

- 1) The medical evidence listed above does not support the requirement 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 Review Team approved the case in 06/05 in order for the claimant to have surgery.

- 3) The report from [REDACTED] dated 09/20/05 shows that the incapacity/disability is expected to last six months and the prognosis is good.
- 4) The statement from Dr. [REDACTED] dated 08/08/05 shows the claimant would require an additional 6 weeks of recuperation prior to being able to go back to work after her surgery on 08/19/05.

**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 November 10, 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 22nd Day of May, 2006.**

---

**Margaret M. Mann  
State Hearing Officer**