



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

June 2, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 7, 2005. 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
Murriel Hylton, DHHR

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

____,

Claimant,

v.

Action Number: 05-BOR-7061

**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 May 15, 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 7, 2006 on a timely appeal, filed October 21, 2005. It should be noted that the hearing record was left open in order for the claimant to provide some additional medical information. The final information was received on May 15, 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

_____, Claimant's Father
Murriel Hylton, 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 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Hearing request dated 10/21/05
- D-3 Denial Notice dated 10/05/05
- D-4 Sections 12.2, 12.3 and 12.4 of the West Virginia Income Maintenance Manual
- D-5 Department's Summary
- D-6 MRT Packet
- D-7 Statement from Dr. [REDACTED] dated 09/08/05

Claimant's Exhibits:

- C-1 Medical information submitted 03/09/06 from [REDACTED] Esquire
- C-2 Additional information submitted 05/16/06 from [REDACTED] Esquire

VII. FINDINGS OF FACT:

- 1) The claimant applied for Medicaid based on disability 09/08/05. On 10/05/05 the worker received the Medical Review Team (MRT) decision that the claimant was not disabled. (D-6)
- 2) The claimant was sent a notice dated 10/05/05 informing him that his application for Medicaid has been denied. Reason: The Medical Review Team (MRT) has denied your Medicaid based on a disabling condition. They state that you do not have any condition

that meets a disability rating. (D-3) The claimant requested a hearing 10/21/05. (D-2)

- 3) The claimant is 40 years of age and has his GED. He last worked at [REDACTED] running a press. He hurt his back. His past work also consists of manual labor running a forklift, building maintenance, and maintenance on machines.
- 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 general physical completed by Dr. [REDACTED] on 09/10/05 reads in part:

Major Diagnosis: Low Back Pain, (L) Eye Blindness and Obesity.

Applicant is able to do sedentary work.

Work situations to be avoided: Bending, lifting, weight, regaining binocular vision.

Duration: Other – depends on further evaluation. Review of records from Dr. [REDACTED]

- 11) Report from Dr. [REDACTED] dated 06/23/05 reads in part:

Physical Examination: At this time, examination does reveal tenderness over the lower lumbrosacral spine and related paraspinal muscle masses. There is tenderness into the

left buttock. ROM of the lumbosacral spine is limited. Straight leg raising testing precipitates lower back pain at 90 degrees on testing the left lower extremity in the sitting posture. Deep tendon reflexes are still 2+ and equal on examination of the patella and Achilles reflex areas of the right as well as left lower extremities. Distal dorsalis pedis and posterior tibial pulses are 2+ and equal bilaterally. Sensation is grossly intact throughout both lower extremities. He is able to heel and toe walk without evidence of weakness. His gait is not antalgic in nature.

Diagnosis: Lumbar disc herniation with lower extremity radiculitis.

Plan: Treatment with medication. No other treatment is recommended.

- 12) There are other quarterly reports from Dr. [REDACTED] in the MRT packet. They generally state the same as above.
- 13) Statement from [REDACTED] Centers of the [REDACTED] dated 09/08/05 reads in part:

Mr. ____ has been under Dr. [REDACTED]'s care since 12/17/02. He is permanent partial disabled at this time.
- 14) Medical information submitted by the claimant after the hearing from his attorney in his RSDI appeal case was reviewed by the State Hearing Officer. A lot of the information was from Dr. [REDACTED] dated as far back as 2002.
- 15) Psychological testing completed by [REDACTED] M.A., Licensed Psychologist, on 12/18/03 show results from the WAIS Scale III. The claimant has a Verbal IQ score of 88, Performance IQ score of 92 and a Full Scale IQ score of 89. The results of the Wide Range Achievement Test-Revision-3 show the claimant was able to demonstrate average scores with respect to reading and spelling. The scores suggest that he is able to spell and read on high school levels. He is able to calculate on a 6th grade level. This could represent evidence of a mathematics disorder.
- 16) Psychological evaluation completed 06/17/03 by [REDACTED] M.A., Licensed Psychologist, reads in part that WRAT-III scores are consistent with reported educational and vocational background and abilities. It does appear that he has reasonably well developed reading and spelling skills, slightly more poor developed arithmetic skills falling at the eighth grade level.

Mr. ____ was administered the MMPI-II as part of the evaluation. The profile obtained does indicate that Mr. ____ is experiencing a severe level of depression. He is likely to have numerous somatic complaints or be overly preoccupied with pain or health issues. He may have a tendency to attempt to explain his emotional distress in physical terms. A moderate to severe anxiety level of anxiety is also likely, as well as difficulty expressing himself assertively in interpersonal relationships. Low energy level or fatigue is likely to be present, as well as a tendency to isolate himself, or withdraw from others. Some paranoia appears to be present, in addition to his tendency to be preoccupied with his pain and health issues. Mr. ____ is likely to be overly sensitive to the opinions and criticisms of others. He is likely to report feeling fatigued or weak and depressed and anxious. Feelings of inadequacy are likely to be present.

Diagnoses:

- Axis I: 296.24 Major Depressive Disorder, Single Episode, Severe, With Psychotic Features.
300.0 Anxiety Disorder, NOS
307.9 Pain Disorder, Associated with Both Psychological Factors and a General Medical Condition
- Axis II: 301.82 Avoidant Personality Disorder
- Axis III: Chronic lower back and leg pain, bulging discs and pinched nerve, blind in left eye.

It is the opinion of the evaluator that the claimant would not be capable of sustaining gainful employment in a reliable and competitive manner. Severe symptoms of depression and anxiety would severely limit his ability in this area. His overall prognosis is considered somewhat poor given his chronic back problems, as well as severe depression and anxiety in combination with Avoidant Personality Disorder.

- 17) Medical reports show the claimant had a left eye injury as a toddler with blindness in his left eye.
- 18) Medical assessment of the claimant's ability to do work-related activities (physical) was completed by Dr. [REDACTED] 10/22/03. Maximum ability to lift and carry on an occasional basis was 20 lbs. Maximum ability to lift and carry on a frequent basis was 10 lbs. Maximum ability to stand and walk (with normal breaks) during an eight-hour day – about 2 hours. Maximum ability to sit (with normal breaks) during an eight-hour day – About 2 hrs. If this individual must periodically alternate sitting, standing or walking to relieve discomfort: (a) How long can this individual sit before changing positions? 30 minutes. (b) How long can this individual stand before changing position? 20 minutes. Does your patient need the opportunity to shift at will from sitting to standing/walking? Yes. Will your patient sometimes need to lie down or unpredictable intervals during a work shift? No. How often can the individual perform the following postural activities: Occasionally was marked for all – climb, balance, stoop, crouch, kneel and crawl. Are the following physical functions affected by the impairment? No was marked for reaching, handling, feeling, pushing/pulling, seeing, hearing, and speaking. On the average, how often do you anticipate that this individual's impairments or treatment would cause the individual to be absent from work? Less than once a month and about once a month.
- 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) Section 1.05, 20 CFR Part 404, Subpart P, App. 1 reads:

1.05 Disorders of the spine:

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30 degrees or more of flexion measured from the neutral position, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or
2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations;
or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior to the compression fracture, with no intervening direct traumatic episode; or
2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine;
and
2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

21) None of the medical evidence indicates that the listing is met.

22) The claimant is unable to perform his past work involving manual labor as he is limited to sedentary work.

23) The claimant is forty (40) years of age and has his GED which is equivalent to a high school education.

24) According to rule #201.28 from 20 CFR Part 404, Subpart P, App. 2, a person limited to sedentary work who is age 18 – 44, has a high school education or more and whose previous work experience is unskilled or semi-skilled with skills non-transferable is not disabled.

25) 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 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 2nd Day of June, 2006.

**Margaret M. Mann
State Hearing Officer**