



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

February 9, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 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
Judy Schurdell, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-7220

**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 February 8, 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 6, 2006 on a timely appeal, filed October 26, 2004.

It should be noted that this hearing was originally scheduled for January 19, 2005. The State Hearing Officer did not travel to _____ County for the hearing on the above date due to inclement weather. Before the hearing was rescheduled, the local office obtained additional information and sent the case back to the Medical Review Team for reconsideration. The State Hearing Officer was notified on July 26, 2005 that the decision had been received on June 21, 2005 stating the claimant was not disabled. The claimant was contacted and he indicated he did not want to continue with the hearing. It was later learned that this was incorrect and the hearing was rescheduled for February 8, 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
Judy Schurdell, 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 appointment letter dated 01/04/06
- D-2 Notice of hearing withdrawal dated 07/27/05
- D-3 MRT Decision notice dated 05/17/05
- D-4 Additional Medical Request dated 03/17/05
- D-5 Report from _____ dated 04/18/05
- D-6 MRT Decision notice dated 02/15/05
- D-7 MRT Transmittal Memo dated 02/14/05
- D-8 General Physical 01/27/05
- D-9 Hearing appointment notice dated 11/04/04
- D-10 Form IG-BR-29 Hearing/Grievance Record Information
- D-11 MRT Decision notice dated 10/20/04
- D-12 Denial notice dated 10/21/04
- D-13 MRT disability Evaluation dated 10/04/04
- D-14 MRT Transmittal Memo dated 09/30/04
- D-15 Social Summary dated 09/10/04
- D-16 Physician's Summary dated 08/31/04
- D-17 Report from _____ Center
- D-18 Report _____ Hospital dated 07/17/04 & 07/20/04

- D-19 [REDACTED] Associates dated 07/14/04
- D-20 Report from [REDACTED] Hospital
- D-21 ES-5 Recording Log

Claimants' Exhibits:

- C-1 Statement from Dr. [REDACTED] dated 03/03/05

VII. FINDINGS OF FACT:

- 1) The claimant was injured in an accident while riding a four-wheel ATV in July, 2004.
- 2) The claimant applied for SSI-Related Medicaid based on a disability 09/10/04. The medical packet was submitted to the Medical Review Team (MRT) on 09/30/04. A decision was returned on 10/20/04 stating that the claimant's disability last six weeks.
- 3) The claimant was sent a denial notice on 10/21/04. A hearing was requested on 10/26/04.
- 4) Additional information was gathered and the case was sent to MRT for reconsideration on. On 03/18/05 MRT requested a psychological evaluation. The case was sent to MRT for reconsideration on 05/05/05. After reviewing additional information, MRT issued a decision on 06/21/05 stating the claimant was still not considered disabled.
- 5) 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.

- 6) 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.
- 7) 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.
- 8) 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.
- 9) The claimant is not employed.

- 10) 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.

- 11) A psychological evaluation was completed 04/18/05. (D-5) WAIS III results: Verbal IQ 113, Performance IQ 94, and Full Scale IQ 104. IQ scores were considered valid.

Mental Status Examination: Thought process: Linear. Thought Content: No delusional qualities of thinking. Perceptual: No evidence of hallucinations or illusionations. Insight: Limited. Psychomotor Behavior: None noted. Judgment: Good. Suicidal Ideation: None, however he expressed recurrent thoughts of death with no active plan. Concentration: Good. Persistence: Good. Pace: Fast. Social Functioning during Evaluation: Appropriate.

Diagnostic Impressions:

Axis I Major Depressive Disorder, recurrent, severe, without psychotic features.

Prognosis: Guarded. (D-5)

- 12) General physical completed by Dr. [REDACTED] on 01/27/05 reads in part:

Major Diagnosis: Headaches, Unilateral blindness Minor Diagnosis: Depression/Anxiety, Obesity. Applicant not able to work at customary occupation – due to chronic HA and vision impairment he would be unable to perform carpentry. Needs to see neurologist to determine ability to perform other full time work. Should avoid driving, working in heights, machinery. Duration of inability to work full-time: six months. It is noted that “it may be possible to train this 45 yo client to make it possible to obtain/maintain gainful employment if symptoms controlled”. (D-8)

- 13) Physician’s summary from Dr. [REDACTED] (D-16) dated 08/31/04 reads in part:

Diagnosis: Fracture zygoma (closed) left
Prognosis: Full recovery
Length of time disability to last: 6 weeks
Employment Limitation: No climbing, no heavy lifting.

- 14) Discharge Summary from _____ Hospital dated 07/21/2004 reads in part:

This is a 43-year-old white male who is status post ATV accident while not wearing a helmet who ran face first into a tree.

Multiple facial fractures, left pinky dislocation, right knee contusion, closed head injury, left epidural hematoma, right subdural hematoma, left frontal skull fracture. Left lip laceration, left frontal skull laceration, left chin laceration – stitched with nonabsorbable suture while in the ER and removed on 07/20/04 with good wound adhesions and no signs of infection. Condition on discharge: Discharged to home in

stable condition. Activity: Full activity as tolerated. (D-18)

- 15) Consultation with Dr. [REDACTED] dated 07/16/04 reads in part that he has read Dr. [REDACTED] note. I agree at this stage there is probably nothing that can be done to save his eye. I would not recommend any surgical intervention. (D-20)
- 16) Statement from Dr. [REDACTED] dated 07/29/04 (D-19) reads in part the claimant has been diagnosed with complete loss of vision in the left eye with no hope of recovery. Otherwise from a trauma standpoint, he is stable to undergo facial fracture repair.
- 17) Statement from Dr. [REDACTED] dated 03/03/05 reads in part that the claimant suffers from long term medical problems including persistent headaches. (C-1)
- 18) The third sequential step is:

If the person has a severe impairment, is the impairment a listed impairment (under 20 CFR Part 404, Subpart P, App. 1) or its medical equivalent? If so, the person is disabled.
- 19) Section 12.04, 20 CFR Part 404, Subpart P. app. 1 discusses affective disorders.
- 20) None of the medical evidence indicates that the listing is met.
- 21) The fourth sequential step is:

If not, what is the person's residual functional capacity, and can that person still perform his or her former work? If so, the person is not disabled.
- 22) The claimant's former work consisted primarily of carpentry and work supervisor in carpentry.
- 23) The fifth and final step is:

If not, can the person do any other work, based upon the combined vocational factors of residual functional capacity, age, education , and past work experience? If not, the person is disabled.
- 24) The claimant was 43 years of age at the time of the hearing request. He has a high school education plus classes at a community college in math and electronics.
- 25) 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.

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) Although the claimant may not be able to perform some past work activities, his age and education demonstrates he could perform other types of work.

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 9th Day of February, 2006.

**Margaret M. Mann
State Hearing Officer**