



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

August 29, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 16, 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 meet the above stated definition.

It is the decision of the State Hearing Officer to reverse 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
William Belcher, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-1299

**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 16, 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 May 16, 2006 on a timely appeal, filed February 27, 2006.

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 Nephew

William Belcher, 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 404.1594 (b)(1)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Summary
- D-2 Hearing Appointment Letter dated 03/07/06
- D-3 Screening Form
- D-4 Combined Application & Review Form dated 12/27/05
- D-5 Copy of Transmittal & Social Summary
- D-6 MRT Decision dated 02/06/06
- D-7 Notification Letter dated 02/16/06
- D-8 Case Comments
- D-9 Income Maintenance Policy 12.2 and 16.9
- D-10 Medical Information used in MRT Decision

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of SSI-Related Medicaid based on being found disabled by the Medical Review Team (MRT). The claimant's testimony revealed he has been receiving a medical card since June 2004.
- 2) The case was due to be reevaluated by MRT. Information was obtained from the claimant 12/27/05. Medical information was gathered and the information submitted to the Medical Review Team. On 02/15/06, the MRT decision was received stating client is not disabled. (D-6)

- 3) The MRT decision reads in part: Client is not disabled. No conditions noted in the record that would meet a disability rating. The above does not qualify for MAO-D. (D-6)
- 4) The claimant was sent a closure notice on 02/16/06. The letter reads in part: Your SSI-Related Medicaid for the Aged, Blind and Disabled will stop. You will not receive this benefit after February 2006. Reason: Individual is not Aged, Blind, or Disabled which is requirement for this Medicaid coverage. (D-7) A hearing was verbally requested 02/27/06 and benefits have continued.
- 5) The claimant is 42 years of age and completed the 10th grade. He can read and write some. He has worked in construction - masonry, stucco – since he was eighteen years of age. He had a bad fall in [REDACTED] in [REDACTED] It jerked his right shoulder out of socket. Both feet were crushed. He had a car accident in [REDACTED] He had injuries to his shoulders, hands and feet. He had a heart catheterization in [REDACTED] A Social Security hearing was held March 30, 2006. The claimant has no income.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) The claimant is not employed.
- 11) 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.
- 12) The claimant had surgery for excision of ganglion cyst, right hand on [REDACTED] Findings: This 41-year old male has a ganglion cyst at the base of his thumb. The patient has arthritis at this area. We are going to proceed to remove the cyst and

maybe remove some of the arthritic spurs. The patient tolerated the procedure well. The surgeon was Dr. [REDACTED]

- 13) Dr. [REDACTED] also completed surgery on the claimant 04/06/05 for carpometacarpal degeneration to the right base of the right thumb. Operation: Arthroplasty to the base of the carpometacarpal joint of the right thumb. The report reads this 41-year old male is well known to me. The patient has significant arthritis at the base of his right thumb. We tried various conservative therapies over the years including splinting and injecting the joint. The patient continues to have pain. At this time, we are going to do arthroplasty to see if we can relieve the pain. The patient tolerated the procedure well.
- 14) The claimant was seen at [REDACTED] Hospital 11/08/03 for substernal chest pain. The consultation by Dr. [REDACTED] 11/09/03 reads in part: Patient with chest pain, very atypical. He does have risk factors of smoking. We will do stress test to rule out ischemic heart disease and make further recommendations.
- 15) Stress test [REDACTED] revealed patient with anterior and inferior mild ischemia and severe apical ischemia. Gated wall motion showing preserved LV function and injection fraction of 62%.
- 16) Stress test [REDACTED] conclusions:
 - 1) Appropriate hemodynamic response to Adenosine.
 - 2) No stress induced chest pain or arrhythmias.
 - 3) The test was negative for ischemia by EKG criteria.
 - 4) Normal myocardial perfusion scan.
 - 5) Normal gated study with ejection fraction of 75%.
- 17) Physician's Summary from Dr. [REDACTED] dated 01/05/06 reads in part:

Diagnosis: Major Affective Illness (Depression)
Prognosis: Poor
Length of Time Disability Is Expected to Last: Year or longer
Employment Limitation: Patient has problems with recurrent Major Affective Illness (Depression). He had psychological testing done in our office, which showed I.Q. in the Low Average Range. He also has problems with Arteriosclerotic Cardiovascular Disease, high blood pressure, status post automobile accident with chronic pain and COPD. The combination of his physical and psychiatric impairment make him disabled from being gainfully employed.
- 18) Progress notes from examination dated 09/23/05 by Dr. [REDACTED] read in part:

General: Well appearing, well nourished in no distress. Oriented x 3., normal mood and affect. Left arm in splint.

Heart: No cardiomegaly or thrills; regular rate and rhythm, nor murmur or gallop.

Extremities: No amputations or deformities, cyanosis, edema or varicosities, peripheral pulses **MARKEDLY DIMINISHED IN BOTH LEGS.**

A: Angina pectoris, stable
CAD, Normal cardiolute stress test
COPD, Progressive

- 19) Physician's Summary completed 01/10/06 by [REDACTED] Group reads in part:

Diagnosis: 726.1 Rotator Cuff Tear right shoulder, 721.0 ? and 715.09 DJD.

Prognosis: Stable

Length of Time Disability to Last: Uncertain

Employment Limitations: Cannot lift heavy weight, cannot stand more than 30 minutes without break, restricted ROM in right arm, left arm & flexion and ? of splint.

- 20) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that medical improvement is any decrease in the medical severity of your impairment which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).

VIII. CONCLUSIONS OF LAW:

- 1) The claimant has been a recipient of SSI-Related Medicaid based on disability for since 2004. This is based on a finding of disability by the Medical Review Team.
- 2) Policy requires that a determination that there has been a decrease in medical severity must be based on change (improvement) in the symptoms, signs and/or laboratory findings associated with the claimant's impairment(s).
- 3) The medical evidence reviewed does not clearly find there has been improvement in the claimant's condition since the most recent favorable medical decision.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does meet the definition of disability. The Department is reversed in the decision to terminate the claimant's benefits under the SSI-Related Medicaid Program. The action described in the notification letter dated February 16, 2006 will not be taken. The case will be reevaluated in August, 2007 with a general physical.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 29th Day of August, 2006.

**Margaret M. Mann
State Hearing Officer**