



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 17, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 13, 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 Hearings 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 based on current policy and 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 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 you meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **reverse** the action of the Department to deny your application for the SSI-Related Medicaid Program.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lula Lester, Dept. Hearing Rep.

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

_____,
Claimant,

v.

Action Number: 06-BOR-2663

**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 October 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 October 13, 2006 on a timely appeal filed July 7, 2006.

It should be noted that benefits have been denied pending the results of this hearing. It should also be noted that the hearing was originally scheduled for October 6, 2006 but was rescheduled at Department's request.

II. PROGRAM PURPOSE:

The Program entitled 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's representative from _____.
Lula Lester, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, 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 agency was correct in the action to deny the claimant's application for the SSI-Related Medicaid Program based on a disability.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- DHHR-1 Copy of hearing summary.
- DHHR-2 Copy of hearing request.
- DHHR-3 Copy of form IG-BR-29.
- DHHR-4 Copy of hearing appointment letter.
- DHHR-5 Copy of denial letter 6-7-06 (7 pages).
- DHHR-6 Copy of ES-NL-A.
- DHHR-7 Copy of MRT transmittal memorandum.
- DHHR-8 Copy of Psychiatrist's summary.
- DHHR-9 Copy of [REDACTED] medical records (5 pages).
- DHHR-10 Copy of DRA-RT-3M 3-6-06 (2 pages).
- DHHR-11 Copy of DFA-RT-3M 11-30-05 (2 pages).
- DHHR-12 Copy of DFA-RT-14.
- DHHR-13 Copy of DFA-RT-3M 11-30-05 (5 pages).
- DHHR-14 Copy of DFA-RT-5 8-31-05 (3 pages).
- DHHR-15 Copy of ES-RT-3 7-11-05 (2 pages).
- DHHR-16 Copy of Social Summary and medical reports (26 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was an applicant of benefits under the SSI-Related Medicaid Program on 5-24-05. Information was submitted to the MRT on 7-14-05 and after additional information was requested, a general physical report was submitted and the MRT denied the case for physical disability on 12-9-5 (Exhibit #DHHR-10). The MRT requested a Psychiatric Evaluation and the MRT denied the case for mental disability on 3-8-06. The case was resubmitted with new documentation and was again denied on 6-6-06.
- 2) On 6-7-06, the Department sent the claimant a Notice of Decision (Exhibit #DHHR-5) advising of the MRT's decision.

- 3) Ms. _____ testified that the claimant suffers from Bi-polar disorder and depression and worked as a nurse.
- 4) The General Physical report from Dr. [REDACTED] dated 9-28-05 (Exhibit #DHHR-14) gives major diagnosis as “Pulmonary Emboli” and “Recurrent Thrombophlegly” and minor diagnosis as “COPD” and “Drug Addiction Rehab.” and states that the claimant is unable to perform customary occupation or like work and any other full time work for a period of one year.
- 5) The Psychiatrist Summary (undated) (Exhibit #DHHR-8) gives diagnosis as “bi-polar II, dep.” and states that “length of time incapacity/disability expected to last: lifetime” and “employment limitation: total for at least 6 months”.
- 6) Psychiatric Evaluation dated 4-21-06 (Exhibit #DHHR-9) gives diagnosis as “Axis I: Bipolar 2 disorder. Opiate dependence. Axis II: Personality Disorder, NOS. Mixed personality disorder. Axis III: Chronic obstructive pulmonary disease. Bleeding ulcers. Hiatal hernia. Blood clots. Axis IV: Severe. Interpersonal, occupational, and family stressors”. The report states that the claimant has suicidal thoughts, impaired impulse control, impaired judgment, impaired insight, poor sleep, poor appetite, anhedonia, feeling tired, nervous, irritable and moody, and is depressed all the time.
- 7) 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.
- 8) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations:
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 impairments(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)
- 9) 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)
- 10) 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? The State Hearing Officer finds that the claimant is not performing substantial gainful activity. The claimant meets this criteria.

(2) Does a severe impairment exist which is expected to last one year or result in death? The State Hearing Officer finds that the claimant has a severe impairment which is expected to last one year or result in death. The claimant meets this criteria.

(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? The State Hearing Officer finds that the claimant's impairment related to bi-polar disorder and depression meets the criteria for a listed impairment under 20 CFR Part 404, Sub Part P, App. 1, Section 12.04 Affective Disorders with a required level of severity with documented evidence of (1) depressive syndrome characterized by (a) anhedonia, (b) appetite disturbance, (c) sleep disturbance, (e) decreased energy, and (h) thoughts of suicide. In addition, these symptoms result in (1) marked restriction of activities of daily living and (2) marked difficulties in maintaining social functioning. The claimant has a severe impairment which is a listed impairment under 20 CFR Part 404, Sub Part P, App. 1. The remaining impairments are not being addressed in relation to whether they qualify as listed impairments).

(4) What is the person's Residual Functional Capacity (20 CFR 404.1545) and can that person still perform his or her former work? The State Hearing Officer finds that the claimant cannot perform her former work of nursing or medical transcriptionist. The claimant meets this criteria.

(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). The State Hearing Officer finds that the claimant cannot perform any other work at this time based on combined vocational factors of poor residual functional capacity, age (54), associate degree in nursing, and past work experience which the claimant can no longer perform. The claimant meets this criteria.

VIII. CONCLUSIONS OF LAW:

- 1) The claimant has a severe impairment which meets the criteria as a listed impairment under 20 CFR Part 404, Sub Part P, App. 1, Section 12.04.
- 2) The claimant meets the definition of disability as she is unable to perform substantial gainful employment for a continuous period of not less than 12 months.

IX. DECISION:

The evidence and testimony received at the hearing clearly show that the claimant meets the definition of disability for the SSI-related Medicaid Program. Therefore, the State Hearing Officer is reversing the Department's action to deny the application for the SSI-related Medicaid Program. Reevaluation will occur in June, 2007.

It is the ruling of this Hearing Officer to **reverse** the action of the Department to deny the 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 17th Day of October, 2006.

Thomas M. Smith
State Hearing Officer