



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

December 4, 2006

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 29, 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  
Susan Godby, DHHR

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

\_\_\_\_\_,  
**Claimant,**

v.

**Action Number: 06-BOR-2863**

**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 November 29, 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 November 29, 2006 on a timely appeal, filed August 18, 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 Mother  
Susan Godby, 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 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Computer Letter dated 07/26/06
- D-3 Section 12.2 of the West Virginia Income Maintenance Manual
- D-4 MRT Decision
- D-5 MRT Packet
- D-6 Department's Summary

**VII. FINDINGS OF FACT:**

- 1) The claimant applied for SSI-Related Medicaid based on disability in April 2006.
- 2) Medical information was requested and the case was submitted to the Medical Review Team (MRT). A decision was received on July 26, 2006 (D-5) from MRT stating the client is not disabled. "DFA-RT-5 of 06/28/06 states "yes" – is able to perform other full time work. The above does not qualify for MAO-D."
- 3) The claimant was sent a denial notice on 07/26/06. (D-2) A hearing was requested on 08/18/06.
- 4) The case was resubmitted to MRT for reconsideration after the hearing request was received. The decision was received from MRT on 10/03/06 stating client is not disabled – "No information presented that would reverse the previous decision. The above does not qualify for MAO-D" (D-4)

- 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) The claimant is twenty years of age and completed the ninth grade. He can read and write. He cannot work because of bad knees. Any stress causes the knees to lock. His past work has consisted of manual labor working in logging, installing ceiling tiles, masonry, and running heavy equipment. He has not applied for Social Security benefits.

- 12) Report from Dr. [REDACTED] dated 08/28/06 reads in part:

Impression: S/P OCD repairs bilateral knees with possible loose joint body in the left and loose fragment on the right.

Plan: At this point in time this is something that will probably cause [REDACTED] problems the rest of his life. At some point in time at an early age he will most likely require TKRs. I certainly do not believe he will be able to do laboring type activities and suggested he try to go back and get some type of education. I told him he would probably need bilateral knee arthroscopies. ....His rehabilitation and prognosis will be drawn out for years and this will be something that will always cause [REDACTED] some problems.

- 13) General physical by Dr. [REDACTED] dated 06/28/06 reads in part that the major diagnosis is osteochondritis dissecans. Applicant is not able to work at customary occupation – Has severe joint disease in both knees – frequent falls – manual labor hazardous. Applicant is able to perform other full time work. He could be able to perform a job that entailed frequent sitting, such as computers or desk jobs. Should avoid heavy lifting, frequent bending of knees.
- 14) Dr. [REDACTED]'s report of 01/18/06 reads in part:
- Impression: S/P right knee injury at work with history of osteochondral defect; possibly torn loose with this new injury, a piece of the chondral fragment.
- 15) Other medical in the record shows the treatment history since 1999. He had arthroscopic drilling of intact osteochondritis dissecans lesion medial femoral condyle, right knee in April 2000. He had an operation for pinning with OrthoSorb pins osteochondritis dissecans lesion medial femoral condyle left knee in May 2000.
- 16) 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.
- 17) Section 1.13, 20 CFR Part 404 Subpart P, App. 1 reads:
- 1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within twelve months after onset.
- 18) None of the medical evidence indicates that the listing is met.
- 19) 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.
- 20) The claimant is unable to perform his former work as a laborer by virtue of his being limited to sedentary work.
- 21) 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.
- 22) The claimant is twenty years of age, has a ninth grade education and is literate.

- 23) According to rule #201.25 from CFR Pt. 404, Subpart P, App. 2, a person limited to sedentary work who is a younger individual age 18 – 44, has less than a high school education 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) There was no convincing evidence or testimony presented during the hearing that would result in a change in the Department's determination that the claimant's condition does not meet the definition of disability.

**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 4th Day of December, 2006.**

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**Margaret M. Mann  
State Hearing Officer**