



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313**

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph. D.
Cabinet Secretary

March 11, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for SSI-Related Medicaid based on a disability.

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 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 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. [WV Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing fails to demonstrate that you meet the criteria necessary to establish a disability as defined by the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your application for SSI-Related Medicaid.

Sincerely,

Cheryl A. Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Levetta Casto, [REDACTED] DHHR

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

-----,

Claimant,

v.

Action Number No.: 11-BOR-427

**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 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 March 8, 2011 on a timely appeal filed December 8, 2010.

II. PROGRAM PURPOSE:

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 witness

Levetta Casto, Economic Service Supervisor (ESS), WVDHHR

Presiding at the hearing was Cheryl A. Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its action to deny the Claimant's application for SSI-Related (disability) Medicaid.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR § 404.1505 - 404.1520, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Verification Checklist form dated October 8, 2010
- D-2 Department's case comments from computer system
- D-3 ES-RT-3 Notification letter dated November 29, 2010
- D-4 ES-RT-3 Evaluation form dated October 20, 2010
- D-5 Medical information and other documents submitted to Medical Review Team (MRT)
- D-6 ES-RT-3 Evaluation form dated December 28, 2010
- D-7 Notification letter dated February 2, 2011
- D-8 WV Income Maintenance Manual Section 12.2

Claimant's Exhibits:

None

VII. FINDINGS OF FACT:

- 1) On October 8, 2010, the Claimant completed an application for SSI-Related Medicaid. The Claimant's medical records (D-5) were secured on October 14, 2010 and forwarded to the Medical Review Team, hereinafter MRT, for a disability evaluation.
- 2) On or about November 29, 2010, the Claimant was notified (D-3) that his application for Medicaid was denied. The Department subsequently resubmitted the medical information to the MRT and again received notice from the MRT (D-6) that the Claimant does not meet the guidelines to be considered disabled. The decision includes the following statement: "No conditions noted that would reverse the previous decision. DF-ART-5 of 10-19-10 states duration of inability to work full time "2 months." The above does not qualify for MAO-D/M-WIN." The Department sent the Claimant a second denial notice (D-7) on February 2, 2011.
- 3) The Department contends that policy requires an individual to be considered disabled for at least twelve (12) months in order to be medically eligible for SSI-Related Medicaid, and because the medical evidence submitted for consideration in this case indicated a much shorter

timeframe of disability, the Department was unable to find the Claimant medically eligible for the program.

- 4) The Claimant testified during the hearing that he was hospitalized from September 3, 2010 through September 24, 2010 due to injuries sustained in a motorcycle accident, and now has received medical bills exceeding seventy thousand dollars (\$70,000). He stated he is unable to pay such large medical bills.
- 5) The Claimant provided testimony that he was only disabled for a few months, and agrees with the Department's finding that he was not disabled for twelve (12) or more months. He states he understands the policy but believes he should be eligible for the program based on need.
- 6) The Claimant's mother, -----, corroborated the Claimant's testimony in regard to the length of time he was disabled, but added that he works at a low paying job, and has no way of paying such large medical expenses. She added that she has attempted to work out arrangements with the medical providers, but that most of them are unwilling to negotiate.
- 7) In reviewing the medical evidence submitted for consideration, it shows that the Claimant's physician, [REDACTED] M.D., submitted a "Physician's Summary" report indicating that he believed the Claimant would be disabled from September 15, 2010 through December 15, 2010. Additionally, a "General Physical" report completed by the same physician on October 19, 2010 indicates expected disability to last two (2) months.
- 8) West Virginia Income Maintenance Manual, Chapter 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.

- 9) 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?
- (2) Does a severe impairment exist which is expected to last one year or result in death?
- (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)
- 10) The Code of Federal Regulations, found at 20 CFR §404.1509, & 404.1520, provides the following guidelines:

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)

VIII. CONCLUSIONS OF LAW:

- 1) Regulations provide that 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.
- 2) The Claimant testified that he is not now disabled but that he needs assistance paying for his medical expenses. He stated that although he was disabled at the time of the accident, his disability only lasted a few months, and did not last for at least twelve (12) months as required by policy. The medical documentation reviewed corroborates the Claimant's statements.
- 3) The Claimant's mother also testified that the Claimant was not disabled twelve (12) or more months.
- 4) The totality of the evidence supports that the Claimant does not meet the requirement of being disabled for at least twelve (12) months.
- 5) Based on the evidence, the Department has followed proper procedure in determining that the Claimant does not qualify for SSI-Related Medicaid.

IX. DECISION:

It is the decision of the Hearing Officer to **uphold** the action of the Department in denying the Claimant's application for SSI-Related Medicaid benefits.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of March, 2011.

**Cheryl A. Henson
State Hearing Officer**