



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review

Earl Ray Tomblin
Governor

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

May 5, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 22, 2011. Your hearing request was based on the Department of Health and Human Resources' decision to deny your SSI-Related Medicaid application based on a finding by the state Medical Review Team that you are not disabled.

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 SSI-Related Medicaid program is based on current policy and regulations. These regulations provide that the definition of disability for Medicaid purposes is the same as the definitions used by the Social Security Administration 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 (West Virginia Income Maintenance Manual 12.2 A).

The information submitted at your hearing revealed that you do not have a listed impairment and do not meet the definition of disability.

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

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
Jennifer Phillips, Economic Service Worker

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

-----,

Claimant,

v.

Action Number: 11-BOR-448

**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 March 22, 2011 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.

II. PROGRAM PURPOSE:

The Program entitled SSI-Related Medicaid is 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

-----, Witness for Claimant

Jennifer Phillips, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to deny Claimant SSI-Related Medicaid was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Policy Manual § 12.2 A
20 CFR § 404.1505 - 404.1545 & 20 CFR § 404.1594, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Request received December 8, 2010
- D-2 Notification Letter dated December 6, 2010
- D-3 Hearing/Grievance Request Notification
- D-4 Medical Review Team Packet
- D-5 WV Income Maintenance Manual § 12.2
- D-6 Department's Summary

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant applied for SSI-Related Medicaid on March 29, 2010. A referral was made to the state Medical Review Team (MRT) to evaluate Claimant for disability. A decision was received from MRT on December 3, 2010, which read in pertinent part (D-4):

After considering all information a decision has been made that the above client is not disabled.

No physical disabilities noted. Client has no Axis I or II mental dx [diagnosis].

- 2) Claimant testified that he has pain in his shoulders and back. Claimant stated he has had vertigo since he was 17 years old and during an episode of vertigo, he cannot drive. Claimant stated he has Chronic Obstructive Pulmonary Disease (COPD) and uses an inhaler. Claimant also has high cholesterol.

Claimant testified that his customary occupation was a water plant operator and he last worked in December 2009. He has his GED and waste water certificate. Claimant stated he was denied Social Security Disability and has appealed the denial. Claimant has been unable to afford his medications as he has no health insurance.

3) The psychiatric evaluation conducted on August 3, 2010 by [REDACTED] Health Services notes that Claimant has occasional depression due to his medical problems and inability to work and listed no mental diagnoses for Claimant (D-4).

4) The general physical completed in May 2010 by Dr. [REDACTED] states in pertinent part (D-4):

Diagnosis Major: Some type of vertigo

Diagnosis Minor: Poor dentition, back and shoulder pain

Is applicant able to work full-time in customary occupation or like work: Uncertain

Duration of inability to work full-time: One year, needs to resolve dizziness

5) WV Income Maintenance Manual § 12.2 A states:

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.

6) 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 § 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 § 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 dual functional capacity, age, education, and past work experience? (20 CFR § 404.1520f)

7) 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)

8) 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)

VIII. CONCLUSIONS OF LAW:

- 1) Claimant is not performing substantial gainful activity as defined in 20 CFR § 404.1510.
- 2) Claimant's impairment is expected to last at least 12 months as required in 20 CFR § 404.1509.
- 3) Medical documentation submitted fails to establish a severe impairment as set forth in 20 CFR § 404.1520. Client does not meet the definition of disability and does not qualify for SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant SSI-Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 5th day of May 2011.

Kristi Logan
State Hearing Officer
Member, Board of Review