



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

Joe Manchin III
Governor

Secretary

January 24, 2005

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 28, 2004. Your hearing request was based on the Department of Health and Human Resources' action to deny your Medicaid application.

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 and benefit levels for the SSI Related Medicaid program are determined based on current 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 last for a continuous period of not less than twelve months. (WV Income Maintenance Manual Section 12.2 (A)(1) Definition of Disability).

The information submitted at your hearing revealed: You do not meet the State's definition of disability.

It is the decision of the State Hearing Officer, to uphold the action of the Department to deny your Medicaid application.

Sincerely,

Ray B. Woods, Jr., M. L. S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review
Alice Crabtree, ESW –  DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 24, 2005 for Ms. _____.

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 scheduled on May 28, 2004, on a timely appeal filed March 17, 2004.

It should be noted here that, Ms. _____ was not receiving Medicaid Benefits at the time of the hearing.

All persons giving testimony were placed under oath. A pre-hearing conference was not held.

II. PROGRAM PURPOSE

The program entitled SSI Related Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

SSI Related Medicaid 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

_____, Mother

Alice Crabtree, Economic Service Worker - [REDACTED] District DHHR Office

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and, A Member of the State Board of Review.

IV. QUESTION(S) 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)(1) Definition of Disability and; 20 CFR §§ 416.905 and 416.920

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

DHS-1	Department Summary
DHS-2	Copy of IM-FH-1 (Fair Hearing and/or Conference Request Form) dated 03/02/04
DHS-3	Copy of IG-BR-29
DHS-4	Copy of IG-BR-40 dated 03/18/04
DHS-5	Copy of Combined Application and Review Form dated 11/03/03
DHS-6	Copy of OFS-RR-1 dated 11/03/03
DHS-7	Copy of ES-RT-2 dated 11/03/03
DHS-8	Copy of ES-RT-1 (Social Summary) dated 11/03/03
DHS-9	Copy of ES-RT-3 dated 01/12/04
DHS-10	Copy of Denial Letter dated 02/03/04
DHS-11	GroupWise Message from Ms. [REDACTED] to Mr. [REDACTED] dated 06/11/04

VII. FINDINGS OF FACT

- Ms. Crabtree submitted the following Hearing Summary:

"Client was in the office 11/03/03 for MRT Re-evaluation. Social Summary was completed and client signed medical releases. On 11/26/03 Medical was requested from Dr. [REDACTED] UVA and UVA Health Sciences Center. An additional medical release was received on 12/04/03 for Dr. [REDACTED] in Princeton. As previously stated, medical was requested from Dr. [REDACTED] on 11/26/03.

Medical was received from Dr. [REDACTED] on 12/30/03. Medical was never received from UVA. Case was submitted to MRT on 01/09/04.

MRT decision was received 01/30/04. Client was found not to be disabled. Case was updated and client was sent a denial letter and copy of MRT decision on 02/03/04.

Received Hearing Request from client on 03/02/04. IG-BR-29 was completed and sent to Hearings Officer that date. Client phoned the customer service center on 03/15/04 asking about appointment for Fair Hearing. Client was advised at that time that the request had been submitted to the hearings officer and she would receive an appointment letter. Client also questioned customer service representative about the need for legal representation. Client was advised that she could contact Legal Aid regarding help for her hearing. On 03/23/04 worker received IG-BR-40 from Hearings Officer advising that hearing was scheduled for 05/28/04 at 2:00 p. m.

Client came into local office 03/26/04 requesting copies of her medical records. Client was informed we could make copies for her but she would have to pay for those copies. Client was unsure what she needed copies of at that time and advised worker she would check with Legal Aid and contact us and let us know what to copy. At that time client was advised that we had never received the medical records from UVA and if we could get this information we could submit this case to MRT for reconsideration. Client stated that she had not been treated at UVA since 1998 and they would Not have any additional information."

- Ms. _____'s Medicaid Benefits terminated in February 2004.
- Ms. Crabtree was not the original Case Worker.
- Ms. _____ requested a definition of "Disability" and "Ability to Work." _____ is unable to work because she has seizures and has word association problems. She is asking for assistance with her medication.
- On November 3, 2003 the claimant applied for medical assistance under the provisions of the Medical Assistance Only program (hereinafter MAO) administered by the West Virginia Department of Health and Human Resources (hereinafter Department).
- Medical information available covering the period December 27, 2001 through November 26, 2003 was obtained and sent to the Medical Review Team (hereinafter termed MRT) on January 9, 2004.
- On January 23, 2004, the MRT determined claimant did not meet the State's definition of disability.
- On February 3, 2004, the Department notified claimant of the decision to deny his application for MAO.
- On March 2, 2004 the claimant requested a fair hearing.
- The claimant's hearing was scheduled on May 28, 2004 on a timely appeal filed March 17, 2004.
- At said hearing claimant appeared with her mother.
- At the hearing, the Department presented documents listed as exhibits DHS-1

through DHS-10, in support of the MRT decision.

- At the hearing, claimant did not present any exhibits in support of her claim.
- Ms. _____ did not appear to understand the hearing process. Her mother assists her when necessary. The claimant was given an opportunity to contact a legal representative within ten (10) days from the date of the hearing. If Ms. Crabtree did not receive the information, a decision would be based on the information submitted at the hearing.
- According to a GroupWise message from Ms. Crabtree to the State Hearing Officer, dated June 11, 2004, Ms. _____ never contacted the Department about a legal representative.

Summary of testimony revealed the following specified information:

- The MRT stated, "ES-RT-8a of 10/9/03 states prognosis is "good with treatment." The above does not qualify for MAO-D."
- On November 15, 1996, Ms. _____ returned to The University of _____ Health Sciences Center, Neurological Out-Patient Unit. This was a three month follow-up of her left temporal lobectomy for intractable epilepsy. The report states in part, "Since the operation she has done well and has been seizure free with no auras. She has had no known mood swings that are out of the range of normal."
- The State's definition of disability for Medical Assistance Only is found in WV Income Maintenance Manual Section 12.2(A) 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.
 - The State's definition of disability for Medical Assistance Only 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.
 - 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.

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. There was no testimony of Ms. _____ working.

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. A severe impairment does not

exist, according to the reports from the University of Virginia Health Sciences Center, Neurological Out-Patient Unit.

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.

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.

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.

VIII CONCLUSIONS OF LAW

West Virginia Income Maintenance Manual Chapter 12.2 (A)(1) *DEFINITION OF DISABILITY*.

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. These definitions are as follows:

1. Individuals Age 18 Or Over

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.

IX. DECISION

The November 15, 1996 report from The University of [REDACTED] Health Sciences Center's three month surgical follow-up states in part, "Since the operation she has done well and has been seizure free with no auras. She has had no known mood swings that are out of the range of normal."

Dr. [REDACTED] continued to follow Ms. _____ after her surgery. In a report received on December 30, 2003, Dr. [REDACTED] states, "Prognosis is good with treatment. Disability is expected to last a lifetime. Employment limitations include no operating equipment,

no driving unless seizure free for one year and no climbing or being in high places." Dr. [REDACTED] continued to regulate Ms. _____'s medication to eliminate her seizures.

After reviewing the medical documentation submitted at the fair hearing, I cannot find any documentation stating, "Ms. _____ is unable to engage in any substantial gainful activity due to any medically determined physical or mental impairment."

It is the decision of this State Hearing Officer that, Ms. _____ does not meet the State's definition of disability.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29