



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Martha Yeager Walker
Secretary

Joe Manchin III
Governor

Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org

March 14, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 10, 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 that you are unable to engage in substantial gainful employment and meet the definition of disability based upon your age and combined vocational factors.

It is the decision of the State Hearing Officer to **reverse** 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
[REDACTED] Social Security Consultant
Jim Honaker, ESW [REDACTED] County 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 March 14, 2005 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 conducted on September 10, 2004 on an appeal filed June 7, 2004.

It should be noted here that the Claimant was not receiving Medicaid benefits at the time of the hearing.

All persons giving testimony were placed under oath.

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
_____, Social Security Consultant
Jim Honaker, Economic Service Worker - _____ County DHHR

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 §§ 404.1505, 404.1520, 404.1510 and 404.1574

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 Department summary
- D-2 Fair hearing request form dated June 7, 2004
- D-3 IG-BR-29
- D-4 IG-BR-40 dated July 12, 2004
- D-5 Copy of application/review form dated February 27, 2004
- D-6 OFS-RR-1 dated February 27, 2004
- D-7 Denial letter dated May 20, 2004
- D-8 Copy of case comments
- D-9 WV Income Maintenance Manual Sections 16.4 and 16.9
- D-10 Medical information
- D-11 Copy of medical bills and emergency department examination sheets
- D-12 Physician's Summary

VII. FINDINGS OF FACT

1. The Claimant, who is 54 years old, applied for Medicaid on February 27, 2004 (D-5, D-6). Medical records were requested from [REDACTED] General Hospital and [REDACTED]
2. The Claimant's medical information (D-10) was sent to the Medical Review Team for consideration on April 15, 2004. An OFS-RT-8a completed by Dr. [REDACTED] lists the date of last patient contact as February 2, 2004. It lists the Claimant's diagnosis as "insulin dependent DM, HTN, Hyperlipidemia, Hepatitis C, OA." The form states the Claimant's prognosis is "fair" and indicates the length of time the incapacity/disability is expected to last is "uncertain." Employment limitations include "no heavy exertion, frequent breaks, no long hours."
3. On May 18, 2004, a decision was received from MRT stating the Claimant is not disabled. MRT stated: "OFS-RT-8a of 2/2/04 states prognosis is 'Fair.' No disabling conditions noted. The above does not qualify for MAO-D."
4. A denial letter (D-7) was sent to the Claimant on May 20, 2004 which stated:

“Action: Your 02/04/04 application for Medical Assistance has been denied.
Reason: This individual is not Aged, Blind, or Disabled which is a requirement for this Medicaid coverage.”

5. Additional medical information (D-11) was received from Raleigh General Hospital on August 26, 2004 and a second Physician's Summary (D-12) was received from Dr. [REDACTED] on August 31, 2004. The summary stated the Claimant is limited to lifting and carrying no more than 30 pounds, limited to standing and/or walking no more than six hours and should work no more than eight hours per day and no more than 30 hours per week. This information was not submitted to the Medical Review Team for consideration.
6. Mr. [REDACTED] testified that the Claimant has been an insulin-dependent diabetic nearly all his life. The Claimant has had much greater difficulty controlling his blood sugar within the past two years and has been diagnosed with Hepatitis C. Mr. [REDACTED] said the combination of these two impairments leave the Claimant unable to work at a full-time job as the Claimant suffers from fatigue and has collapsed. He currently works as a bartender at the [REDACTED] earning about \$325 gross per month. Mr. [REDACTED] said the Claimant has friends at the bar to assist him at all times. At standard employment, he stated the Claimant would not be able to take the breaks that he needs and would likely work at such a pace that he would be unable to recognize potential medical problems. With proper treatment, Mr. [REDACTED] said the Claimant may be able to sustain full-time work in the future, however, the Claimant is currently unable to afford treatment. Because the Claimant is over age 50, Mr. [REDACTED] said he does not believe the Claimant is able to work at a light exertion level on a full-time basis. He said the Claimant may be able to sustain sedentary work, but does not have the experience/qualifications for these types of jobs. He believes the Claimant should be found disabled under application of Vocational Rule 201.14 in Chapter 20 of the Code of Federal Regulations.
7. The Claimant stated he works three, eight-hour shifts per week at the [REDACTED]

VIII CONCLUSIONS OF LAW

1. 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.
2. 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 § 404.1505.

- 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 § 416.1520.

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.

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?

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 (20 CFR 404.1545) 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.

IX. DECISION

Regulations are clear that in order to qualify as disabled, an individual must suffer a severe impairment and this impairment must have lasted or be expected to last for a continuous period of 12 months. A severe impairment is defined as an impairment which significantly limits an individual's physical or mental ability to do basic work activities. An individual who is 18 years of age or older is considered disabled if that person is unable to engage in any substantial gainful activity as a result of such impairment.

Utilizing the sequential step process to determine disability:

(1) Is the person performing substantial gainful activity?

Evidence reveals the Claimant is employed 24 hours per week as a bartender, the customary profession at which he has worked since 1984. However, testimony reveals that the Claimant is earning gross income of \$325 monthly, which is significantly less than the \$700 monthly an individual must average to meet substantial gainful activity guidelines as set forth in 20 CFR §404.1574.

(2) Does a severe impairment exist which is expected to last one year or result in death?

An ES-RT-8a completed by Dr. [REDACTED] lists the Claimant's diagnosis as "insulin dependent DM, HTN, Hyperlipidemia, Hepatitis C, OA." The form states the Claimant's prognosis is "fair" and indicates that the length of time the incapacity/disability is expected to last is "uncertain." Employment limitations include "no heavy exertion, frequent breaks, no long hours." An additional Physician's Summary completed by Dr. [REDACTED] states the Claimant is limited to lifting and carrying no more than 30 pounds, limited to standing and/or walking no more than six hours and should work no more than eight hours per day and no more than 30 hours per week. It is recommended that he take 15-minute breaks for every two to three hours of work. Medical documentation suggests the Claimant's conditions have more than a minimal effect on his ability to engage in gainful activity. Testimony revealed he is able to work at the [REDACTED] because he is permitted frequent breaks and receives assistance from his friends.

(3) If the person has a severe impairment, is the impairment a listed impairment? Evidence fails to establish the existence of a "listed impairment."

(4) What is the person's Residual Functional Capacity and can that person still perform his or her former work?

Testimony reveals the Claimant has worked as a bartender since 1984 and has been employed in the food and beverage industry for most of his adult life. While he remains employed in this capacity at some level, it is not a level that could be considered gainful and is, therefore, irrelevant.

(5) Can the person do any other work based upon the combined vocational factors of residual functional capacity, age, education and past work experience?

The Claimant is 54 years old with a college degree. His experience in the food and beverage industry is not readily transferable to another occupation so he meets the disability criteria located in Rule 201.14 of 20 CFR 404 in regard to his Residual Functional Capacity.

Based on evidence presented during the hearing, I find the Claimant disabled for purposes of the Medicaid Program. The Claimant would be incapable of holding regular employment in which he is not subject to frequent breaks. His work history and age do not indicate that his skills are readily transferable to sedentary employment. It is the decision of the State Hearing Officer to **reverse** the action of the Agency to deny the Claimant's SSI-Related Medicaid application.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29