



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
227 Third St.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 13, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 16, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your Medicaid application based on failure to meet disability criteria.

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. 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 last for a continuous period of not less than 12 months. [WV Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for Medicaid purposes.

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Esq.
Pam Street, FSS, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-4718

**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 October 13, 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 convened on June 16, 2005 on a timely appeal filed March 30, 2005.

II. PROGRAM PURPOSE:

The program entitled 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, participating telephonically
_____, attorney for Claimant, participating telephonically
Pam Street, Family Support Supervisor, DHHR
Tammy Pritt-Jones, Economic Service Worker, DHHR

Presiding at the hearing was Pamela Hinzman, 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 Agency was correct in its action to deny the Claimant's application for SSI-Related Medicaid based on failure to meet disability criteria.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing summary
- D-2 Medical record packet sent to Medical Review Team
- D-3 ES-RT-3 (MRT decision) dated February 18, 2005
- D-4 DFA-RT-5 (physical examination report) completed by Dr. [REDACTED] dated February 10, 2005
- D-5 Medical records and MRT decision dated August 24, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on July 19, 2004. Medical records from Dr. Sammar Atassi and test results from [REDACTED] General Hospital (D-2) were forwarded to the Agency's Medical Review Team, hereinafter MRT, to determine whether the Claimant meets disability requirements.

The records lists diagnoses on various dates in 2003 and 2004 of acute bronchitis, rhinitis, hypertension, corn on left foot, hyperlipidemia, history of carotid stenosis, neck pain, back pain- more than likely musculoskeletal in nature, abnormal liver function- more than likely secondary to alcoholic hepatitis, GERD- controlled, COPD- stable, pulsatile abdominal mass- rule out aneurysm, right carotid bruit- rule out stenosis, chest pain- rule out CAD, smoking- rule out COPD, suspect carpal tunnel syndrome- especially on the right.

The Claimant, who is 51 years old, has previously worked as a general laborer and construction worker. He was last employed in 2002

- 2) The MRT reviewed the Claimant's medical documentation and requested that the Claimant undergo a physical examination so that eligibility could be determined.

- 3) A physical examination was conducted by Dr. [REDACTED] and the results (D-4) were submitted to the MRT. The report listed major diagnoses of COPD, heart murmur, chronic backache and atypical depression. The physician checked "yes" when asked whether the Claimant is able to work at his customary occupation and "no" regarding his ability to perform other full-time work. The report stated the Claimant should avoid physically demanding or emotionally stressful work situations and that his inability to work full-time is six months.
- 4) A decision (D-3) was received from the MRT on March 17, 2005 which states:
- Denied on basis of RT-5 examiner on 2-1-05 states that patient may work full time.
- 5) During the hearing, Ms. [REDACTED] stated that the Claimant had applied for Social Security Disability and that the Social Security Administration scheduled a psychological evaluation for July 15, 2005. The attorney contended that this information is pertinent to the decision since psychological problems existed at the time of the Claimant's application.
- 6) The hearing record remained open so that results of the psychological exam could be obtained and submitted to the MRT. The records were submitted to the MRT on August 24, 2005. The packet included a psychological exam report by Dr. [REDACTED] that lists diagnoses of alcohol dependence, generalized anxiety disorder, as well as chest pains, acid reflux, hearing loss, back and neck pain, and headaches, by Claimant report. The Claimant's prognosis was listed as "good." Also included in the packet was a physical examination report from Dr. [REDACTED]. The exam, which had been completed on April 6, 2005 at the request of the Social Security Administration, lists conclusions as dizziness which may be attributed to poorly controlled hypertension, chest pain which may be attributed to gastritis, conduction deafness, and pain and numbness which could be secondary to alcohol dependency. Neither the psychological nor physical exam reports indicate that the Claimant has a disability.
- 7) A decision was received from the MRT on September 19, 2005 which states:
- Deny. Client is diagnosed alcohol dependence and GAD. He has no severe functional limits as a result of mental impairment.
- 8) West Virginia Income Maintenance Manual ' 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) 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)
- 11) 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) The Claimant is not performing substantial gainful activity as defined in 20 CFR ' 404.1510.
- 2) While the Claimant has some severe mental and physical impairments, evidence fails to substantiate that his mental or physical impairments are expected to last one year or result in death.
- 3) The Department followed proper procedures in determining that the Claimant does not meet disability requirements.

IX. DECISION:

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

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of October 2005.

Pamela L. Hinzman
State Hearing Officer