



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

September 2, 2005

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 10, 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
Lisa Heater, ESW, DHHR

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

____,

Claimant,

Action Number: ____

**v.
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 September 2, 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 May 10, 2005 on a timely appeal filed February 7, 2005. The hearing was originally scheduled for March 29, 2005 but was rescheduled by the Hearing Officer due to automotive mechanical difficulties.

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
Lisa Heater, ESW, 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 request form
- D-2 Medicaid denial letter dated February 7, 2005
- D-3 Medical documentation submitted to MRT for review on March 17, 2005
- D-4 West Virginia Income Maintenance Manual Section 12.2(A)
- D-5 Medical documentation submitted to MRT for review on July 6, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on July 15, 2004. The Claimant's medical documentation was forwarded to the Agency's Medical Review Team, hereinafter MRT, to determine whether the Claimant meets disability requirements.
- 2) The MRT reviewed the Claimant's medical documentation and determined that the Claimant is not disabled.
- 3) The Claimant was sent a Medicaid denial letter on February 7, 2005.
- 4) Upon a request for reconsideration, the Claimant was referred to Dr. [REDACTED] for a general physical examination and underwent a psychological evaluation at [REDACTED] Health Service. In addition, the Claimant was referred to the [REDACTED] Clinic for additional physical examination information. Comments on the reconsideration form indicate the medical packet was resubmitted because the Claimant continues to have major depression, high blood pressure and uncontrolled diabetes.

The DFA-RT-5 General Physical Examination form (D-3) completed by Dr. [REDACTED] on March 17, 2005 includes a diagnosis of depressive disorder-NOS, diabetes mellitus and hypertension. Additionally, the information indicates that the Claimant has leg and back pain. The physician indicated that the Claimant would be unable to perform full-time work of any kind due to his pain and depression. Dr. [REDACTED] checked the "other" option

listed under “duration of inability to work,” explaining that the Claimant stated he would be unable to “handle any job at this time.”

The psychological evaluation from [REDACTED] Health Services indicates that the Claimant had been placed in [REDACTED] Hospital twice in 2003 as a result of suicide attempts. The Weschler Adult Intelligence Scale- III was administered and revealed that the Claimant has a full-scale IQ of 88, which falls in the low average range of intellectual functioning. The Claimant completed an MMPI-2 Personality Assessment. The results of the assessment were similar to “those experiencing moderate emotional distress characterized by brooding, dysphoria, anger and anhedonia.” The Claimant was diagnosed with major depressive disorder, recurrent, without psychotic features and pathological gambling on Axis I.

Progress notes included in the MRT packet from an unidentified source indicate the Claimant has a history of hypertension, diabetes, hyperlipidemia, depression and neuropathy. It was noted that the Claimant had undergone an ultrasound at an emergency room and it was determined that he had a sciatic nerve problem.

- 5) The new information was sent to the MRT. A DFA-RT-3M dated April 18, 2005 and included in Exhibit D-3 reveals the basis of the denial. This document states:

Client is diagnosed major depression and compulsive gambler. Client displays moderate deficits in adaptive function as a consequence of mental impairments. He could perform work activities.

- 6) The Claimant testified that he suffers from depression, finds it difficult to work with others, wastes time and thinks often of death. He also indicated he has problems with his leg, back and hips, which had previously been diagnosed as a sciatic nerve defect. That diagnosis is now questionable, he stated, noting that he sometimes walks three steps and then falls. The Claimant also indicated he has a problem with one of his testicles, which is swollen and contains knots. The Claimant has twice attempted suicide and stated he cannot obtain the health care he needs without a medical card.
- 7) The Claimant, who is 53 years old and presently unemployed, testified that he was last employed for four years at [REDACTED] as a night auditor. He worked in that position until October 1, 2004 when he quit because the company wished to monitor him on day shift as a result of his depression. He stated that this move would have resulted in a reduction in hours. Prior to the Amerihost employment, the Claimant worked for five years at [REDACTED] as a front desk clerk/night auditor and had worked as a sheet metal operator for 20 years. The Claimant is a high school graduate and stated he developed computer skills while serving as a night auditor.
- 8) The hearing record remained open so that a reconsideration request could be made to evaluate the Claimant’s physical problems as it appeared that only the Claimant’s mental condition had been addressed in the MRT decision. In addition, the Claimant stated he had been treated at [REDACTED] Hospital twice in regard to his suicide attempts and an effort was made to obtain those medical records.

- 9) Ms. Heater was unable to obtain records from [REDACTED] Hospital and the medical packet was submitted to MRT for reconsideration on July 6, 2005 (D-5). The MRT decision was received in the [REDACTED] County DHHR on August 2, 2005 and indicated the Claimant did not meet disability requirements. The ES-RT-3 dated July 29, 2005 states:

Review of clinical records does not reveal the presence of a covered physical disability condition. A recent psychiatric evaluation was requested but not obtained.

Ms. Heater indicated the Claimant would not agree to participate in the psychiatric evaluation.

- 10) 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.
- 11) 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)
- 12) 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)
- 13) 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) The Claimant has a severe impairment, major depressive disorder, recurrent, which hinders his ability to perform work activity, as well as some physical ailments. However, evidence fails to substantiate that the impairment is 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 2nd Day of September 2005.

**Pamela L. Hinzman
State Hearing Officer**