



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 29, 2005

[REDACTED]

Dear [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 12, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid based on a disability.

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 Medicaid Program (SSI-Related) 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 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)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **uphold** the action of the Department in denying your application for SSI-Related Medicaid.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Linda Zeigler, ESW, DHHR

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

  
**Claimant,**


**Action Number: 05-BOR-5463**

**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 July 29, 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 July 12, 2005 on a timely appeal, filed April 5, 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  
Linda Zeigler, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, 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 their action to deny the Claimant's application for SSI-Related Medicaid based on a disability.

#### **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 Notice of Decision dated 3/17/05
- D-2 ES-RT-3, Disability/Incapacity Evaluation, reviewed by MRT on 3/5/05
- D-3 DFA-RT-8A, Physician's Summary dated 11/20/04
- D-4 Social Summary Outline dated 12/20/04
- D-5 Medical Documentation submitted to MRT for Review

##### **Claimants' Exhibits:**

Claimant's -1 Notation from [REDACTED] Medical, [REDACTED] M.D., (6/28/05)

#### **VII. FINDINGS OF FACT:**

- 1) The Claimant completed an application for SSI-Related Medicaid on December 20, 2004. The information included in exhibits D-3 (Physician's Summary), D-4 (Social Summary Outline) and D-5 (Claimant's medical records) was forwarded to the Medical Review Team, hereinafter MRT, to determine if the Claimant is disabled.
- 2) The MRT reviewed the Claimant's medical documentation and determined that the Claimant is not disabled. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

No conditions noted in the record that would be disabling. DFART-8a of 11/29/04 states prognosis is "good." The above does not qualify for MAO-D.

- 3) On March 17, 2005, the Department sent the Claimant a Notice of Decision, exhibit D-1, advising of the MRT's decision.

- 4) The Claimant testified that he has been a crane operator through the union for several years and was operating a crane in September / October 2004 when he was removing large containers of chromium acid. The containers would often burst causing a cloud of dust and he was virtually trapped in the crane unprotected. The exposure to chromium acid caused skin irritation and lesions, and it has affected his respiratory system as well as his stomach and throat. He has not received any Workers' Compensation and he has several outstanding medical bills. He is currently taking pain medication and must take shots to boost his immune system. He stated that he went to a poison toxicologist in [REDACTED] who advises him that the chromium acid poisoning is almost out of his system but he will suffer some permanent damage. His doctor has reportedly said that he would not be able to operate a crane again because he is unable to climb into a crane and his peripheral vision has been damaged. He last worked for one week in January 2005, but indicated that a company with whom he was in good standing allowed him to work a "sit-down job" because he really needed the money.
- 6) The Physician's Summary (D-3) reports the last date of patient contact 11/29/04. Dr. [REDACTED] includes some of the following information in this document. The Claimant's diagnosis is listed as 692.9 – Contact Dermatitis. His prognosis is "good" and the physician indicates that there is no disability due to this condition.
- 7) Included in exhibit D-5 is an OFS-RT-8a from (Physician's Summary) Dr. [REDACTED] date of last patient contact 12/21/04. Dr. [REDACTED] includes a diagnosis of Hepatitis C. The Claimant's prognosis is reported to be "stable." There is no time limit marked for the length of disability / incapacity and the Claimant's employment limitations are reported to be "none."
- 8) Exhibit D-5 includes an OFS-RT-8a (Physician's Summary) from Dr. [REDACTED] A portion of this document is unreadable due to a document lying on it when it was copied, however, the following information was obtained. This document was received by the Department on January 27, 2005. The diagnosis is abdominal pain and the prognosis is fair. The length of time incapacity /disability is to last is blocked, but employment limitations appear to be "none."
- 9) Testimony received from the Claimant indicates that he does not have the medical documentation from the poison toxicologist and that the medical documentation submitted to the MRT was before he was diagnosed with chromium acid poisoning. The Claimant submitted exhibit C-1, correspondence from Ramesh [REDACTED] M.D., [REDACTED] Medical, dated 6/28/05 which states as follows:

"Mr. [REDACTED] has multiple medical problems including liver disease/ herniated disc/ Hepatitis C / chromium acid poisoning. "Should be off work until further order."

- 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 evidence submitted at the hearing fails identify a severe impairment that is expected to last for a continuous period of at least 12 months or result in death.
- 2) The Department has followed proper procedure in determining that you are not disabled.

**IX. DECISION:**

The testimony received at the hearing clearly indicates that the Claimant is experiencing multiple health problems, but the medical documentation submitted for review, including the physician's statement, fails to satisfy the severity and duration requirements necessary to establish a disability for the purpose of the Medicaid Program.

It is the ruling of this Hearing Officer to **uphold** the action of the Department in denying your application for SSI-Related Medicaid benefits.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 29th Day of July 2005.**

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**Thomas E. Arnett  
State Hearing Officer**