



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 23, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2005. Your hearing request was based on the Department of Health and Human Resources' action to close your Medicaid Program case.

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 continue to meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to reverse the action of the Department to close your SSI-Related Medicaid Program case.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Fran Bellamy, Dept. Hearing Rep.

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

Claimant,

v. Action Number:

**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 August 17, 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 11, 2005 on a timely appeal, filed May 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
Fran Bellamy, 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 the proposal to close the claimant's SSI-Related Medicaid Program case 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 Copy of review request from claimant's attorney (2 pages)
- D-2 Copy of notification letters 4-28-05 and 4-29-05 (7 pages).
- D-3 Copy of regulations (4 pages).
- D-4 Copy of MRT packet (32 pages)
- D-5 Copy of requests for additional medical reports (15 pages).
- D-6 Copy of new MRT packet (57 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of the SSI-Related Medicaid Program when reevaluation was due. The information included in exhibit D-4 included a Physician's Summary and Social Summary Outline and was forwarded to the Medical Review Team, hereinafter MRT, on 3-17-05 to determine if the claimant met the definition of disability.
- 2) The MRT reviewed the claimant's medical documentation and determined that the claimant did not meet the definition of disability on 4-14-05. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

"No physically disabling conditions noted. The above does not qualify for MAO- D."
- 3) On April 28, 2005, the Department sent the claimant a Notice of Decision (Exhibit D-2) advising of the MRT's decision.
- 4) The claimant testified that he has not able to work for 6 and ½ years, that he has tried rehabilitation at Institute for 6-7 weeks 3 times a day, that he has degenerative disc disease of the spine, that he has sciatica and spinal stenosis with a bulging disc and possible herniation, that he has pain in his right hip and leg, that it is hard for him to sit or stand for long periods of time, that he only gets relief when he lays on his stomach, and that he had a steroidal spinal injection on 6-7-05 from Dr. [REDACTED]. The claimant has been employed as an assembly line worker, machine operator, and waiter/cook.

- 6) The Physician's Summary (D-4) reports the last date of patient contact 12/30/04 and states that disability is expected to last more than one year. Report from [REDACTED] MD, dated 6-29-05 gives assessment as "1. Lumbar degenerative disc disease. 2. Lumbar radiculopathy. 3. Osteoarthritis". The report also states that he had "zero range of motion secondary to pain in the lower back and unsteadiness".
- 7) Report of MRI of Thoracic Spine (D-4) shows conclusion as "Degenerative disc bulging is seen at multiple thoracic levels. Minimal findings are seen at T7/T8 without additional findings. Slightly MOR obvious T11/T12 bulging is seen. Disc herniation at this level cannot be ruled out. Followup is suggested. No other changes are seen."
- 8) Report of MRI of brain gives conclusion as "Right maxillary sinus retention cyst due to sinusitis is suggested. No acute intracranial findings or abnormalities are suggested. Seventh, Eighth nerve complexes appear unremarkable. Diffusion images are unremarkable".
- 9) Report of X-ray of Thoracic Spine 5-9-05 shows "Frontal and lateral films reveal adequately maintained vertebral bodies and disc spaces. Vertebral pedicles are unremarkable. No other changes or unusual findings are seen".
- 10) Report of Psychological Evaluation completed 3-2-05 showed no diagnosis in Axis I or Axis II.
- 11) 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.
- 12) 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)
- 13) 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)

- 14) 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 identifies following: that the claimant (1) is not performing substantial gainful employment, (2) has a severe impairment that is expected to last for a continuous period of at least 12 months or result in death with documented diagnosis as having musculoskeletal impairment of lumbar degenerative disc disease, lumbar radiculopathy, and osteoarthritis substantiated by findings of an MRI of thoracic spine showing degenerative disc bulging at multiple thoracic levels and disc herniation cannot be ruled out, that this diagnosis meets the criteria listed in Section 1.06 of 20 CFR Part 404, Sub Part P, App. 1 or its medical equivalent, that (4) the claimant cannot perform his former work, and (5) that the claimant cannot perform any other work at this time based on residual functional capacity, age (34), education (12th grade), and past work experience.
- 2) The claimant meets the definition of disability and reevaluation will occur in July, 2006.

IX. DECISION:

It is the ruling of this Hearing Officer to reverse the action of the Department to close the SSI-related Medicaid case. The case will be due for medical reevaluation in July, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of August, 2005.

**Thomas M. Smith
State Hearing Officer**