



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

September 14, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 14, 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  
Peggy Wikle, ESW, DHHR

**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 September 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 convened on July 14, 2005 on a timely appeal, filed June 7, 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  
Rachel Matthews, 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:**

- A. Social Summary Outline completed on 10/27/04.
- B. Physician's Summary from Dr. [REDACTED] Ed.D, Licensed Psychologist.
- C. Previous MRT approval – Medical records and ES-RT-3 completed on 10/31/03
- D. Memorandum from MRT dated 2/1/05 requesting x-ray of L.S. Spine and DFA-RT-15a (Psychiatrist's Summary) from Dr. [REDACTED]
- E. X-Ray Report from [REDACTED] Health Care Center dated 2/18/05.
- F. Notice of decision dated 5/11/05 accompanied by ES-RT-3 from the MRT dated 5/5/05.

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

- 1) The Claimant was undergoing a medical reevaluation to determine continued eligibility for participation in the SSI-Related Medicaid Program. A Social Summary (exhibit A) was completed on October 27, 2004.
- 2) Medical records were requested from Dr. [REDACTED] and Dr. [REDACTED] however, information was received from Dr. [REDACTED] only (Physician's Summary - exhibit B).
- 3) The Claimant's most recent favorable medical evaluation (exhibit C) and exhibits A and B were submitted to the Medical Review Team (hereinafter MRT), for reevaluation on or about March 30, 2005.
- 4) The only new and current medical documents included is the Physician's Summary (exhibit B) returned from Dr. [REDACTED] This document includes some of the following pertinent information:

The Claimant was last seen on 11/2/04, her current diagnosis is Depressive Disorder and her prognosis is fair. Her current disability / incapacity is expected to last longer than 6 months. Employment limitations include the following statement – "Depression and chronic back pain contribute to difficulty executing prolonged physical activity."

- 5) On February 1, 2005, the MRT requested additional medical information. Exhibit D reveals that the MRT requested an X-Ray of L.S. Spine and a DFA-RT-15 a (Psychiatrist's Summary). It was determined that the MRT already had a Psychiatrist's Summary (exhibit B from Dr. [REDACTED]) so the Department scheduled an X-Ray of the lower Lumbar Spine.
- 6) The Claimant underwent an X-Ray exam on February 18, 2005 and exhibit E reveals the following results:
- Views of the lumbar spine show degenerative change at the thoracic lumbar junction with inner vertebral disc spaces being well preserved. No definite acute bone or joint abnormality is seen.
- 7) Exhibit F includes the findings of the MRT and the Department's notice.  
-The DFA-RT-3M reviewed by the MRT on 5/5/05 indicates under section III that the client is not mentally disabled. Section IV, E states – "CT is diagnosed generalized Anxiety Disorder. Ct's treating psychologist says CT has fair prognosis with expected period of disability / incapacity greater than 6 mo. This does not meet 12 mo. Criteria.  
-An ES-RT-3 reviewed by the MRT on 5/3/05 also indicates that the client is not disabled. The MRT states – "No physically disabling conditions noted. The above does not qualify for MAO-D.  
-On May 11, 2005, the Claimant was notified by the Department of the MRT's findings.
- 8) The Claimant testified that she has not been able to work for a period of four (4) years. She is a high school graduate and attended vocational training to become a Certified Nurses Aid and she last worked as a substitute cook for the [REDACTED] County Board of Education. She continues to have back problems and referred to a letter that was written by [REDACTED] D.O., from the [REDACTED] Clinic on July 16, 2003. She stated that she does suffer from anxiety and depression but that her physical health is causing her disability. She has had several MRI's that show she has a herniated disc with nerve root displacement in her lower lumbar area but the surgeons don't want to operate on it. She testified that she needs another MRI and she has developed other medical conditions that need to be addressed.
- 9) 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.

- 10) 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)
- 11) 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)
- 12) 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) Is the person performing substantial gainful activity as defined in 20 CFR 404.1510.  
Evidence reveals that the Claimant has not been employed for a period of 4-years.
- 2) Does a severe impairment exist which is expected to last one year or result in death?  
A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings. The medical evidence received in this case fails to identify a severe impairment or a condition that is expected to last for a period of one year or result in death.

**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 14th Day of September 2005.**

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**Thomas E. Arnett  
State Hearing Officer**