



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 25, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 29, 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
Stephanie Rizzio, ESS, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-5978

**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 25, 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 September 29, 2005 on a timely appeal filed June 15, 2005. The hearing was originally scheduled for August 25, 2005, but was rescheduled at the request of the Department. It was then scheduled for September 7, 2005, but was rescheduled at the request of the Claimant.

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

_____, friend of Claimant

Stephanie Rizzio, Economic Services Supervisor, 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 West Virginia Income Maintenance Manual Section 12.2(A)
- D-2 Packet of medical records/information sent to Medical Review Team with attached MRT decision
- D-3 Medicaid denial letter dated June 1, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on March 9, 2005. Medical records (D-2) from Dr. [REDACTED], Dr. [REDACTED] and [REDACTED] Hospital were forwarded to the Agency's Medical Review Team, hereinafter MRT, to determine whether the Claimant meets disability requirements.

A DFA-RT-8a Physician's Summary completed by Dr. [REDACTED] lists a date of last patient contact as February 18, 2005 and a diagnosis of pelvic pain. The Claimant's prognosis is listed as "good" and the length of time an incapacity/disability is expected to last is listed as "unknown." Employment limitations are listed as "no heavy lifting."

The Claimant, who is 46 years old, completed the 11th grade and was last employed in 2003 in the housekeeping department at [REDACTED] Resort. She left that employment when she was diagnosed with cervical cancer.

- 2) A decision (D-2) was received from the MRT on May 27, 2005 which states:

DFA-RT-8a dated 2/18/05 indicates a "good" prognosis and "no heavy lifting" for employment. The above does not qualify for MAO-D, 1 year.

- 3) The Claimant was sent a Medicaid denial letter (D-3) on June 1, 2005 explaining that her application had been denied due to failure to establish disability.

- 4) The Claimant testified that she had three operations for cervical cancer in 2003, has had back problems stemming from an automobile accident in 2003, and has bronchitis, endometriosis and leg spasms. Ms. _____ testified that her stomach is swollen and Dr. [REDACTED] plans to complete medical procedures to explore the source of the swelling.

- 5) 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.

- 6) 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)

- 7) 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)

- 8) 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 had cervical cancer in 2003 and has some current physical impairments, evidence fails to substantiate that these 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 25th Day of October 2005.

Pamela L. Hinzman
State Hearing Officer