



**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

November 10, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 1, 2005. Your hearing request was based on the Department of Health and Human Resources' action to close your SSI-related 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 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 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
Denesa Clark, Dept. Hearing Rep.

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

_____,
Claimant,

v.

Action Number: 05-BOR-6265

**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 November 7, 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 1, 2005 on a timely appeal, filed July 20, 2005.

It should be noted that the claimant's benefits have continued pending the hearing decision.

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
Denesa Clark, ESW, DHHR
Tammy Stamper, ESW, observing.

Presiding at the Hearing was Thomas M. Smith, 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 due to not meeting the definition of 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 Copy of hearing summary (2 pages)
- B Copy of hearing appointment letter and form IG-BR-29 (2 pages).
- C Copy of notification letter 7-20-05 (3 pages).
- D Copy of MRT packet (25 pages).
- E Copy of letter dated 7-26-05.
- F Copy of letter dated 8-4-05.
- G Copy of MRT packet resubmitted.
- H Copy of MRT packet resubmitted to MRT on 10-12-05 by order of State Hearing Officer (52 pages).

Claimant's Exhibits:

- Cl-1 Copy of discharge from _____ Hospital 8-26-05.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of the SSI-Related Medicaid Program when reevaluation was due in June, 2005. The information included in exhibit D included a General Physical report and Social Summary Outline and was forwarded to the Medical Review Team, hereinafter MRT, on 6-15-05 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 7-13-05. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

“DFART-5 of 6-7-05 does not reveal any disabling conditions. The above does not qualify for MAO-D.”
- 3) On 7-20-05, the Department sent the claimant a Notice of Decision (Exhibit C) advising of the MRT's decision and the claimant requested a hearing on 7-20-05 and additional

documentation was obtained and sent to the MRT for reconsideration on 8-8-05 and the MRT determined on 8/11/05 that the claimant did not meet the definition of disability.

- 4) The claimant testified that he was in _____ Hospital in August, 2005 and almost had a stroke, that his medicine costs \$525 a month, that he has high blood pressure, headaches, and chest pains, that he has been employed as a food service specialist, restaurant manager, and in construction. The claimant testified that he had been referred to _____ of _____ Center in _____ for psychiatric evaluation and the State Hearing Officer ordered the Department to request a report from _____ Center and _____ Hospital and to resubmit the case to MRT when the reports were received. It should be noted that Mr. _____ left a phone message on 9-6-05 stating he had an appointment with a Psychologist/Psychiatrist on 9-20-05 and the State Hearing Officer informed Ms _____ to obtain the report of the appointment.
- 6) The Physician's Summary (D-4) from Dr. _____ of _____ Health shows patient contact as 9-20-05 and gives diagnosis as "Impulse Control Disorder r/o Intermittent Explosive Disorder" and states that disability is expected to last "three months".
- 7) Report from _____ of _____ Hospital with discharge date of 8-26-05 shows a discharge diagnosis as "Hypertension, Hyperlipdemia, Antisocial personality disorder". The report states that "blood pressure came down with a dose of IV labetalol and adjustment of his antihypertensives", that "an MRA of his renal arteries showed no evidence of renal artery stenosis", and that "he was ruled out for myocardial infarction and telemetry has remained stable".
- 8) Report of cardiac catheterization conducted 3-29-05 by Dr. _____ showed "current symptoms are noncardiac in origin and his cardiac prognosis is good. There is no evidence he has ever had a prior myocardial infarction. He does not have any renal vascular hypertension".
- 9) Report of general physical by _____ dated 6-7-05 gives major diagnosis as "chest pain, hypertension" and states that he cannot perform his customary employment but does not answer if he can perform other work.
- 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 impairment(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 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 of hypertension, (3) that this diagnosis does not meet the criteria listed in Section 4.00 of 20 CFR Part 404, Sub Part P, App. 1 or its medical equivalent, that the claimant's other impairments are not severe enough to be considered as severe impairments which are expected to last for a continuous period of at least 12 months or result in death. The final two (2) sequence of steps are not addressed since there is no finding of a severe impairment which meets the criteria of 20 CFR Part 404, Sub Part P, App. 1.
- 2) The claimant does not meet the definition of disability for the SSI-related Medicaid Program.

IX. DECISION:

It is the ruling of this Hearing Officer to uphold the action of the Department to close the SSI-related Medicaid Program case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of November, 2005.

Thomas M. Smith
State Hearing Officer