



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 7, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 25, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for Medicaid based on disability not determined.

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,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Melissa Link, ESW, DHHR

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

_____,
Claimant,

v.

Action Number: 05-BOR-6484

**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 October 25, 2005 on a timely appeal, filed August 9, 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
Melissa Link, ESW, DHHR

Presiding at the Hearing was Sharon K. Yoho, 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 disability not being met.

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 Request for disability determination dated 5/5/05
- D-2 Physician's Summary, (OFS RT-8a)
- D-3 _____ Hospital History and Physical
- D-4 Social Summary Outline
- D-5 ES-RT-3, Disability/Incapacity Evaluation, reviewed by MRT on 6/8/05
- D-6 Notice of denial dated 6/15/05
- D-7 Additional medical submitted to MRT for reconsideration dated 7/1/05
- D-8 ES-RT-3, Disability/Incapacity Evaluation, reviewed by MRT on 7/22/05
- D-9 Notice of denial dated 8/3/05
- D-10 WV Income Maintenance Manual §12.2

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on April 12, 2005 while a patient at _____ Hospital, being treated for Diabetic Ketoacidosis.
- 2) The Department submitted a Physician's Summary, Social Summary and Hospital Admission History and Physical record to the Medical Review Team (MRT) on April 29, 2005.
- 3) MRT reviewed the Claimant's medical documentation and determined on June 8, 2005 that the Claimant did not meet the definition of disabled. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

"Medical information and physician statement show that expected length of disability from your Diabetes Mellitus and Leg cellulites is less than one year."

- 4) The Physician's Summary indicated that the claimant's prognosis was fair and that the length of disability was expected to be approximately one (1) month. It stated that the claimant has difficulty bearing weight on his right leg and has significant residual pain and swelling.
- 5) The Department sent a notice of denial to the claimant on June 15, 2005.

- 6) The Department submitted additional medical to the MRT on July 1, 2005 for reconsideration. The Department attached a cover memo, which advised the MRT that Mr. _____ was currently working 15 to 20 hours weekly at [REDACTED] Ambulance Service.
- 7) The Medical Review team again made the determination that the claimant did not meet the definition of Disabled required by the program. Notation on item E. of the ES-RT-3 states:
- “No conditions noted that would reverse the previous decision. The above does not qualify for MAO-D.”
- 8) Mr. _____ is a diabetic who requires medication for this condition which he cannot afford to purchase. He is employed 15 to 20 hours a week and hopes to be able to work increased hours in the future. He currently has a prosthetic leg, which limits the type of work that he can perform.
- 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) Policy states that disability is established if the client is unable to engage in any substantial gainful activity and the condition is to last not less than twelve (12) months. The evidence submitted at the hearing fails to 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 procedures in determining that the claimant is not disabled and therefore does not qualify for the SSI related Medicaid program.

IX. DECISION:

The testimony received at the hearing clearly indicates that the claimant is experiencing health problems and employment limitations however; 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. Ms. Link advised the claimant that she would investigate the possibility of his qualifying for Medicaid under a different program designed for persons employed part time.

It is the ruling of this Hearing Officer to **uphold** the action of the Department in denying the 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 7th Day of November 2005.

**Sharon K. Yoho
State Hearing Officer**