



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 20, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 5, 2006. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for the SSI-Related Medicaid Program.

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. Some of these regulations state as follows: 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 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 in the opinion of the State Hearing Officer, you do meet the above stated definition.

It is the decision of the State Hearing Officer to reverse the action of the Department to deny your application for the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Sally Conley, DHHR

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

_____ 
Claimant,

v.

Action Number: 06-BOR-2746

**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 5, 2006 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 5, 2006 on a timely appeal, filed August 9, 2006.

It should be noted here that the claimant's benefits have been denied.

II. PROGRAM PURPOSE:

The Program entitled SSI-Related 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
Sally Conley, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, 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 claimant meets the eligibility requirement of categorical relatedness for SSI Related Medicaid by qualifying as a disabled person as defined by the Department.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2(A)
20 CFR 416.905 and 416.920
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2
20 CFR 404.1508, 404.1509, 404.1520, & 404.1594(b)(1)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Form ES-RT-3 Notification Letter dated 07/25/2006
- D-3 Medical Review Team (MRT) Packet dated 07/06/2006
- D-4 Income Maintenance Manual Sections 9.19, 12.1, 12.10, 12.11, 16.1 & 16.4
- D-5 Case Comments dated 05/19/2006 through 08/18/2006
- D-6 MRI Report dated 06/01/2006

Claimant's Exhibits:

- C-1 Patient Notes from Dr. _____ dated 08/29/2006
- C-2 Hearing Evaluation dated 05/31/2006
- C-3 Doctor Notes
- C-4 Prescription dated 04/11/2006

VII. FINDINGS OF FACT:

- 1) The claimant applied for SSI-Related Medicaid based on a disability 05/18/2006. Information was obtained and the case was submitted to the Medical Review Team for evaluation of the claimant's disability.
- 2) A decision was received from MRT on 07/15/2006. The finding was that the client is not physically disabled. "No physical disabilities noted. The above does not qualify for MAO-D." The claimant was found not mentally disabled. "Deny client is diagnosed major depressive disorder. He exhibits moderate functional limits as a result of mental impairments which would not prevent work." (D-3)
- 3) The claimant was notified of the denial in a letter dated 07/25/2006. He requested a

hearing on this matter 08/09/2006.

- 4) The claimant is 33 years of age and has his high school diploma. He has no specialized training. He last worked in 2002 in the logging business. He clear cut timber for two years. He also worked for a [REDACTED] running heavy equipment and other jobs. Other past work includes grounds maintenance for the park service. The claimant lists his medical ailments as neck pain, problems with his lower back, migraine headaches, his nerves, and he cannot taste or smell.

- 5) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in substantial gainful employment by reason of 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 State's definition of disability for Medicaid is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR 416.905.

- 7) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI; these are set forth in 20 CFR 416.920.

- 8) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.

- 9) The claimant is not employed.

- 10) The second sequential step is:

If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled.

- 11) The physician's summary from [REDACTED] M.A., Supervised Psychologist, reads in part:

Diagnosis: Major Depressive D/O 296.33

Generalized Anxiety D/O

Prognosis: Guarded to Fair

Length of Time Disability Expected to Last: Undetermined

Employment Limitation: Undetermined

- 12) The psychological report dated 05/23/06 from Dr. _____, _____ Health Care, reads in part:

Medical Health: Mr. _____ described his overall health as “good”. Mr.

_____ complains of numerous physical symptoms to include: herniated discs in his neck, back pain, ear pain, and headaches. He has undergone surgery for the following: reconstructive surgery on his face due to his previous head injury. Family history of blood clots. Reports experiencing pain everyday.

Behavioral Observation/Mental Status: Short-term memory was significantly impaired as he could recall two out of four objects after several minutes. Concentration was below average as he completed a word reversal task in a slower than average manner. He was oriented in all spheres. Mr. _____ was able to interpret parables through concrete reasoning.

_____’s affect was appropriate and reactive. He described his mood as “worried”. Observed mood was anxious and depressed. His speech was congruent with affect, conversational in nature and of average volume and tone. His attention and concentration were judged adequate for the evaluation. He was able to understand and follow instructions.

Test Results: Wechsler Adult Intelligence Scale-Revision III: Verbal IQ: 87; Performance IQ: 81; Full Scale IQ: 84. Overall, Mr. _____’s cognitive functioning was measured within the Low Average range. **WRAT3:** Mr. _____’s achievement scores in reading were commensurate with ability scores. On the Reading subtest, he scored within the Average range and the Post High School grade level. **Aggression Questionnaire (AQ):** On the AQ, Mr. _____ answered questions in a consistent manner. Results indicate that _____ experiences an above average amount of anger when compared to his same age peers. He also experiences an above average amount of aggression, physical aggression, verbal expression, anger and hostility. **Beck Depression Inventory-Revision Two:** On the BD-II, Mr. _____ reported depressive symptoms that were measured within the Severe range (43). **Beck Anxiety Inventory:** On the BAI, Mr. _____ reported anxiety symptoms that were measured within the Severe range (44). **Bender Visual Motor Gestalt Test:** On the BVMGT, Mr. _____ produced drawings with few errors. This is not suggestive of organicity.

Diagnostic Impression:

Axis I: 296.33 Major Depressive Disorder, Recurrent, Severe
300.02 Generalized Anxiety Disorder
Axis III: Severe Head Injury
Axis V: 60

Recommendations: Mr. _____ should be referred to a psychiatrist to assess the need for medications. He should stay in close contact with his prescribing physician so his medications can be adjusted and monitored appropriately. He should also obtain

counseling to address his depressive and anxious conditions. Anger management should be included in order for treatment to be maximally effective. He should also be evaluated periodically for an increase in suicidal ideation.

- 13) General physical completed by Dr. _____ dated 05/22/06 reads in part: Major Diagnosis: Post traumatic head/neck pain, herniated disc C3-4; Minor Diagnosis: Depression. Applicant unable to work full time at customary or like work because of above problems. Applicant unable to perform other full time work because of above problems. Work situations to be avoided: Any strenuous physical or mental effort. Duration of inability to work full time – Probably Permanent.
- 14) The claimant had previously been approved by the Medical Review Team from July 2000 through June 2003 as meeting the disability requirements. The case was due for MRT review in December 2004. The general physical by Dr. _____ dated 10/27/03 reads in part: Major Diagnosis: Herniated cervical disc. Minor Diagnosis: Eustachern dysfunction, depression. Applicant unable to work full time at customary occupation or like work – too much head and neck pain. Applicant unable to perform other full time work – too much head and neck pain. Inability to work full time: Until further treatment herniated disc. The general physical by Dr. [REDACTED] is basically the same as the 2003 report.
- 15) Report from Dr. [REDACTED] dated 08/29/06 reads in part:
Diagnosis:
MRI with “abnormal signal seen in the frontal lobes bilaterally, with prominence sulcus on the left. Some subcortical White-Matter changes seen bilaterally, more prominent on the right. May be consistent with his old head injury, vs. T2 & FLAIR-signal changes which can be seen in the Migraine.
Traumatic Brain Injury #854.0 2000
Post-Concussive Syndrome #310.2
Headache NOS #784.0. Question of Migraine Headache #346.90.
Cervical Degenerative Disc Disease #722.4

His memory and mood issues are classic for Postconcussion syndrome. His headache triggers sound like migraine triggers, and we’ll sample some triptans, to see if they help.

- 16) Report of MRI Orbits, Face, Neck W/WO Cont. dated 05/31/06 reads in part: There is abnormal signal seen in the frontal lobes bilaterally with prominence sulcus on the left. Some subcortical white matter changes seen bilaterally more prominent on the right. This may be related to previous ischemic disease or injury. Clinical correlation is suggested. MR MRI Cervical Spine reads in part: Moderate diffuse posterior disc bulge at C3-C-4 with resultant borderline-mild AP diameter canal stenosis. There is also resulting mild left neural foraminal stenosis at this level. Other levels demonstrate no focal disc protrusion or gross neurologic impingement. Cervical cord appears normal. The vertebral bodies are normal in height and alignment.
- 17) 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)

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)

- 18) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that medical improvement is any decrease in the medical severity of your impairment which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires that the claimant must have a severe impairment which has lasted or can be expected to last one year or result in death. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with the individual's impairment(s).
- 2) The medical evidence presented in this case does not show any medical improvement since last found disabled by the Medical Review Team.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does meet the definition of disability. The Department is reversed in the decision to deny the claimant's application for the SSI-Related Medicaid Program because the definition of disability was not met. The application will be approved provided all other eligibility requirements are met. The case will be reviewed in October 2007 with at least a general physical.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of October, 2006.

**Margaret M. Mann
State Hearing Officer**