



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

December 7, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 9, 2006. 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
Cynthia Myers, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-3151

**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 9, 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 November 9, 2006 on a timely appeal, filed September 29, 2006.

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
_____, Claimant's daughter
Cynthia Myers, Family Support Supervisor, 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 SSI-Related Medicaid application based on disability not being met.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 12.2(A)
20 CFR ' 404.1505 - 404.1545 – 404-1599 Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Physician's Summary, DFA-RT-5 dated April 24, 2006
- D-2 Physician's Summary, DFA-RT-5 dated June 2, 2006
- D-3 Social Summary Outline dated June 15, 2006
- D-4 Memo to Medical Review Team dated June 15, 2006
- D-5 Disability/Incapacity Evaluation dated June 19, 2006
- D-6 Memo to Medical Review Team dated August 24, 2006
- D-7 Social Summary Outline dated April 24, 2006
- D-8 Disability/Incapacity Evaluation dated September 25, 2006
- D-9 [REDACTED] Hospital Report dated April 23, 2006
- D-10 [REDACTED] Hospital Discharge Summary dated April 24, 2006
- D-11 [REDACTED] Health Center records
- D-12 Physician's Summary of patient contact February 6, 2004
- D-13 Disability/Incapacity Evaluation dated May 25, 2005
- D-14 Notice of denial dated September 27, 2006
- D-15 WV Income Maintenance Manual §16.9
- D-16 WV Income Maintenance Manual § 12.2 thru § 12.12

VII. FINDINGS OF FACT:

- 1) The claimant had been an active SSI related Medicaid recipient. The Department completed a review of these Medicaid benefits in June of 2006 and made the determination that the claimant did not meet the disability requirements of the program. This determination was made by the Medical Review Team in Charleston based on the medical documents submitted by the local DHHR office. Among the documents submitted was a Physician's Summary (Exhibit D-1) completed by the claimants physician, [REDACTED] MD on April 24, 2006. The physician stated on this document that the claimant had diagnosis of RLL Pneumonia, Hypertension and Hyperlipidemia. He further stated that the length of time Incapacity/Disability is expected to last is 6 to 8 weeks. This physician completed another summary on June 2, 2006 (Exhibit D-2) in which he included additional diagnosis of CKD Stage III / Tophaceous Gout / Hyperuricemia and added that the length of disability is expected to last a lifetime however; he noted that there were no employment limitations.

- 2) The Department submitted the above documentation along with medical records to the DHHR Medical Review Team, (MRT) on June 15, 2006. The Medical Review Team made a determination that the claimant was not disabled. Noted on their evaluation (Exhibit D-5) was, "Review of clinical records does not reveal the presence of a covered disability condition. DFA-RT-5 dated 6/2/06 indicates pt. able to work full time."
- 2) The Department submitted a request for re-consideration on August 24, 2006 to (MRT) with an updated Social Summary. (MRT) again denied eligibility on August 28, 2006 based on disability not determined. The review team noted, "DFA-RT-8a dated 6/2/06 indicates no employment limitations."
- 3) The claimant was admitted to [REDACTED] Hospital on April 20, 2006 for Pneumonia. She was treated and released on April 24, 2006. A follow up with her primary care physician, [REDACTED] determined on April 28, 2006 that the claimant was feeling well with no shortness of breath.
- 4) Exhibit D-11 documents that this claimant has a history of gouty arthritis, which causes symptoms that can sometimes limit her physical abilities. She was seen in July 2004 at the [REDACTED] Health Center for a flare-up of this condition. She reported to the attending physician that the flare up was the first flare up in almost four years. This claimant's past approval for Medicaid was determined after MRT had been sent a Physician's Summary dated February 2004. The Dr. who completed this summary noted under employment limitations, "Severe Gouty Arthritis – hands, knees and feet. No specific limitations were noted on this summary."
- 5) The claimant's testimony regarding her limitations was regarding some loss of nerves in her hands and feet. She states she cannot grip things very well. She also indicates that her Blood Pressure medication sometimes makes her dizzy.
- 6) She has a High School diploma however; she has a very limited work history. She was employed at a [REDACTED] for 2 years, which ended approximately 7 years ago. She worked 1 ½ years at [REDACTED] before that. Her total work history consists of only 3 ½ years. She has not been employed in the past 7 years. She attended 1 year of Food Service training through Vocation Technical School.
- 7) 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.
- 9) 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)

10) 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)

11) 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)

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 § 404.1599 Code of Federal Regulations, Listing of Impairments:

Disorders of the musculoskeletal system may result form hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

Loss of function: Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal

impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months.

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. Although the medical conditions that she has are considered to be chronic, the evidence submitted at the hearing does not support that the claimant has an impairment that would prevent her from engaging in any substantial gainful activity.
- 2) The condition that prompted the 2004 eligibility decision was regarding her limitations due to the condition of Gouty Arthritis. It is clear in (Exhibit D-11) that this condition results in flare-ups that can be as much as four years apart. This does not constitute a disability condition that would keep this claimant from being able to engage in substantial gainful employment.

IX. DECISION:

It is the ruling of this Hearing Officer to **uphold** the action of the Department to deny 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 December 2006.

**Sharon K. Yoho
State Hearing Officer**