



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

February 2, 2007

Dear Mr. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 28, 2006. Your hearing request was based on the Department of Health and Human Resources' proposed action to discontinue your Medicaid coverage 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 discontinuing your SSI-Related Medicaid.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Dan Pyles, DHHR

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

_____,

Claimant,

v.

Action Number: 06-BOR-2308

**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 September 28, 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 September 28, 2006 on a timely appeal, filed June 30, 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
Dan Pyles, Income Maintenance 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 proposed action to terminate the Claimant's SSI-Related Medicaid benefits due to 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 WV Income Maintenance Manual Chapter 12.2
- D-2 Disability/Incapacity Evaluation dated May 22, 2006 regarding mental disability
- D-3 Disability/Incapacity Evaluation dated May 22, 2006 regarding physical disability
- D-4 Memo to Medical Review Team dated May 18, 2006
- D-5 Social Summary Outline dated May 18, 2006
- D-6 Psychiatrist's Summary and information from [REDACTED]
- D-7 Disability/Incapacity Evaluation dated July 7, 2005

VII. FINDINGS OF FACT:

- 1) The claimant had been an active SSI related Medicaid recipient due to mental disabilities. The Department completed a review of these Medicaid benefits in May 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 Psychiatrist's Summary and Medical documents from [REDACTED] (Exhibit D-6) and Social Summary (Exhibit D-5).
- 2) The Department submitted the above documentation along with the previously submitted medical records of the year 2005 to the DHHR Medical Review Team, (MRT) on May 18, 2006. The Medical Review Team made a determination that there was sufficient information submitted for a determination. The Medical Review Team determined that the claimant was not mentally or physically disabled. Noted on their evaluation (Exhibit D-2) was, "Deny Ct is diagnosed Substance Abuse, Depressive Disorder NOS R/O Malingering Personality Disorders NOS. Ct has no known limitations to employment." Noted on their evaluation (Exhibit D-3) was, "Review of clinical information does not support the presence of a physical disability."
- 3) The claimant admits that his mental condition has improved, but he has concerns regarding a Degenerative Disc condition in his back that causes him much pain. He states that he received injections in his spine two months prior to this hearing. He says

that he has not returned to the doctor because his back is not bothering him now because he is not working. He says that when he tries to work, he often ends up down on his knees with his head in his hands ready to cry from the pain.

- 4) Since there was no current Medical evaluation and only a mental evaluation sent to the Medical Review Team, this hearing record was held open for 30 days for the Department to obtain an updated General Physical report and for the claimant to obtain medical records from [REDACTED] where he was seen for his back condition. The Department scheduled an October Doctors appointment for the claimant to received a general physical. The claimant did not keep this appointment nor did he supply medical records from [REDACTED]
- 5) The claimant has a High School diploma and his working skills are in construction. He is reported to be literate and he exhibited good communication skills during this hearing.
- 6) 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.
- 7) 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)
- 8) 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)

- 9) 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)

- 10) 20 CFR § 404.1599 Code of Federal Regulations, Listing of Impairments:
Disorders of the musculoskeletal system may result from 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. The claimant admitted that his mental condition had improved. His statement alone regarding back pain does not support that he could not engage in any substantial gainful activity considering that he possesses a High School Degree and is literate.
- 2) Policy stipulates that there must be a severe impairment present in order to determine disability. No severe impairment has been determined.

IX. DECISION:

It is the ruling of this Hearing Officer to **uphold** the action of the Department to discontinue your SSI-Related Medicaid coverage.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 2nd Day of February 2007.

Sharon K. Yoho
State Hearing Officer