



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

June 13, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 25, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny benefits under 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 benefits under 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: 07-BOR-1042

**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 June 25, 2007 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 June 25, 2007 on a timely appeal, filed March 27, 2007. It should be noted that this hearing was originally scheduled for May 9, 2007. The Claimant did not keep the appointment. A hearing abandonment letter was mailed May 10, 2007. The Claimant responded within the appropriate time limit and the hearing was rescheduled for June 25, 2007.

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 & CFR 404.1508
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2
20 CFR 404.1594 (b)(1) Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 03/27/2007
- D-3 MRT Packet
- D-4 Section 12.1 & 12.10 of the West Virginia Income Maintenance Manual
- D-5 Department's Summary

VII. FINDINGS OF FACT:

- 1) The Claimant applied for SSI-Related Medicaid based on disability 02/15/2007. Information was obtained and the medical packet was submitted to the Medical Review Team (MRT). MRT determined that the Claimant did not meet the state's definition of disability.
- 2) The determination from the MRT reads in part: "no conditions noted that would be disabling. The above does not qualify for MAO-D." (Exhibit D-4)
- 3) The Claimant was sent a denial notice on 03/27/2007 (Exhibit D-2). It reads in part:

"The State Medical Review Team has found that the Claimant is not disabled/incapacitated." (Exhibit D-2)
- 4) The Claimant is 45 years of age and completed the eighth grade. He reports he cannot

read and write. He last worked in 1999 as a mechanic's helper for heavy equipment. He has also done carpentry and janitorial work. He was involved in a 4-wheeler wreck in 2005. He has medical problems which include but are not limited to his back (stays numb on one side), seizures, allergies, hearing and eye problems, bad headaches and forgetfulness.

- 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) General physical dated 02/22/2007 by Dr. [REDACTED] reads in part:

Diagnosis: Major: Seizure d/o, chronic lumbar pain & radiculopathy, HA, and poor vision. Minor: Cervi?, GERD.

Is applicant able to work full-time at customary or like work: No. Explain: Laborer back pain does not allow pt to perform these duties.

Is applicant able to perform other full-time work: No. Explain: 8th grade education – no skills. Needs GED.

What work situations, if any, should be avoided: lifting, bending, stooping, etc.

Duration of inability to work full time: One year.

- 12) Testimony from both parties at the hearing revealed that the Claimant had been approved by MRT based on disability. He received a medical card for two years. The medical records used to make this determination have been misplaced at the local office and cannot be found. MRT does not have a copy of these records. The Claimant was incarcerated in November 2006 and the Medicaid case was closed during this time. He reapplied for Medicaid in December 2006 and he was found not disabled by MRT.
- 13) 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 impairment(s).
- 2) There was credible testimony in this hearing that the Claimant had been approved by MRT as disabled for the past two years. The information from the file has been lost. When the case was evaluated by the MRT, the Claimant was found not disabled.
- 3) The medical information does not show any change (improvement) from the Claimant's previous condition.

IX. DECISION:

It is the finding of the State Hearing Officer that the Claimant meets the definition of disability. The Department is reversed in the decision to deny the Claimant's application for the SSI-Related Medicaid Program. The case will be reevaluated with a general physical in July 2008.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of July, 2007.

**Margaret M. Mann
State Hearing Officer**