



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 13, 2006

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2007. Your hearing request was based on the Department of Health and Human Resources' action to close your SSI-related Medicaid Program case.

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 continue to meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **ureverse** the action of the Department to close your SSI-Related Medicaid Program case.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lula Lester, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 07-BOR-1437

**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 July 11, 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 July 11, 2007 on a timely appeal filed May 18, 2007. It should be noted that the hearing was originally scheduled for June 13, 2007 but was rescheduled at claimant's request.

It should be noted that benefits have been continued pending the results of this hearing.

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
Lula Lester, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, 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 the action to close the claimant's SSI-Related Medicaid Program case based on a disability.

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 Copy of MRT packet denied 5-7-07 (11 pages)
- D-2 Copy of notification letter 5-16-07 (2 pages).
- D-3 Copy of regulations.
- D-4 Copy of MRT packet denied 2-22-07 (85 pages)
- D-5 Copy of MRT packet approved 08/11/05 (15 pages).

VII. FINDINGS OF FACT:

- 1) The claimant was a recipient of benefits under the SSI-Related Medicaid Program when reevaluation was due in August, 2006. The information included in exhibit D-4 was sent to the Medical Review Team (MRT) and was denied for mental or physical disability as the MRT determined on 2-22-07 that the claimant did not meet the definition of disability.
- 2) After notification of case closure was issued, the claimant requested reconsideration and a new general physical report was obtained from Dr. [REDACTED] and sent to the MRT. The MRT determined on 5-7-07 that the claimant did not meet the mental or physical definition of disability (Exhibit #D-1).
- 3) On January 5-16-07, the Department sent the claimant a Notice of Decision (Exhibit D-2) advising of the MRT's decision.
- 4) The claimant testified that he lost 50% of lung capacity and that his oxygen level is down to 60%, that he has not gotten any better, that he has Hepatitis C, depression, diverticulitis, and problems with his joints, that he has worked as a ticket taker and janitor, is 51 years old with a GED.
- 5) The General Physical Report (DFA-RT-5) completed by Dr. [REDACTED] dated 4-3-07 (D-1) gives major diagnosis as Hepatitis C with minor diagnosis as Cholestitis, COPD, Emphasema, Alcoholism, states that the claimant cannot work full-time at customary

occupation or other full-time work, states that all work situations should be avoided, and states that disability is expected to last one year.

- 6) Report of diagnostic evaluation from Rachel Arthur, Licensed Psychologist, dated 1-3-07 gives Diagnostic Impressions as Axis I-Major Depressive Disorder, Single Episode, Mild, Anxiety Disorder NOS, Maladaptive Behaviors, Alcohol Dependence, Early Full Remission. The report states that the claimant reported lack of interest in things, excessive appetite, feelings of hopelessness and suicidal ideations without intent, difficulty concentrating, sleep disturbance, irritability.
- 7) Report of Psychiatrist's Summary from [REDACTED] Licensed Psychologist, dated 1-3-07 state that length of time disability is expected to last is more than one year and that claimant's depression and anxiety impair concentration and that significant physical pain would likely impair functioning more so than emotional problems.
- 8) Psychiatric Evaluation completed 6-14-05 by [REDACTED] M.D., Psychiatrist, gives Axis I diagnosis as Alcohol Dependence, Depressive Disorder NOS, Attention Deficit Hyperactivity Disorder NOS by history, Learning Disorder by history, Axis II as Dependent Personality Traits.
- 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) The evidence submitted at the hearing showed that the claimant is not currently performing substantial gainful employment.
- 2) The evidence submitted at the hearing showed that a severe impairment exists which is expected to last one year or result in death.
- 3) The evidence submitted at the hearing showed that the claimant's severe impairment is a listed impairment under 20 CFR Part 404, Sub Part P, App. 1 (Section 12.04).
- 4) The evidence submitted at the hearing showed that the claimant has limited Residual Functional Capacity (20 CFR 404.1545) and cannot perform former work.
- 5) The evidence submitted at the hearing showed that the claimant can not do any other work based upon the combined vocational factors of residual functional capacity (limited), age (51), education (GED), and past work experience (ticket taker and janitor).

IX. DECISION:

The evidence and testimony received at the hearing clearly indicate that the claimant has a severe impairment which prevents him from engaging in substantial gainful activity and is expected to last for a continuous period of one year or result in death. The claimant meets the definition of disability for the SSI-related Medicaid Program.

It is the ruling of this Hearing Officer to reverse the action of the Department in denying your application for SSI-Related Medicaid benefits. The case will be reevaluated 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.

**Thomas M. Smith
State Hearing Officer**