



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 970  
Danville, WV 25053

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 20, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 20, 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, the medical you submitted for evaluation does not meet the above stated definition.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny benefits under the SSI-Related Medicaid Program.

Sincerely,

Cheryl McKinney  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Henrietta Martin, [REDACTED] DHHR

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 07-BOR-1463**

**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 20, 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 September 20, 2007 on a timely appeal, filed May 14, 2007. It should be noted that this hearing was originally scheduled for August 15, 2007. The hearing was rescheduled for September 20, 2007 at the request of the Department.

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

\_\_\_\_\_, Claimant's witness

Jacquetta Harris, Office Assistant, \_\_\_\_\_ DHHR

Henrietta Martin, Supervisor, \_\_\_\_\_ DHHR

Presiding at the hearing was Cheryl McKinney, 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

### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

#### **Department's Exhibits:**

- D-1 Department Summary
- D-2 ES-RT-3 dated July 23, 2007
- D-3 DFA-RT-14 dated July 18, 2007
- D-4 ES-RT-3 dated June 21, 2007 and supporting medical
- D-5 Medical dated March 21, 2007
- D-6 ES-RT-3 dated April 20, 2007
- D-7 Social Summary
- D-8 General Physical dated March 29, 2007
- D-9 Medical dated January 11, 2007

### **VII. FINDINGS OF FACT:**

- 1) The Claimant applied for SSI-Related Medicaid based on disability February 26, 2007 because of knee and back problems. The Claimant advised the Department that she had medical records at \_\_\_\_\_ Hospital. The Department requested copies of medical records from \_\_\_\_\_ Hospital on February 26, 2007, and scheduled the Claimant for a general physical with Dr. \_\_\_\_\_. The medical records and new general physical were received and submitted to the Medical Review Team (MRT) on March 30, 2007.

- 2) The Medical Review Team (MRT) decision (D-6) was received by the Department on April 26, 2007, indicating the Claimant was found to be not disabled. The determination from the MRT reads in part: "DFA-RT-5 dated 3/29/07 indicates pt. able to work full time. X-rays of spine do not reveal nerve impingement."
- 3) On May 23, 2007 the Claimant came in to the DHHR for her pre-hearing conference. She maintained that she was still disabled, and indicated that she sees Dr. [REDACTED] at [REDACTED] Hospital, having seen him as recently as March 2007. The Department again requested medical records from [REDACTED] Hospital on June 12, 2007. The only new medical that was received was from an Emergency Room visit by the Claimant on March 21, 2007. The new medical was submitted with the old to the Medical Review Team for reconsideration. The MRT returned a decision on June 19, 2007 (D-4) indicating they needed additional information in the form of a DFA-RT-8a from the attending physician. The Department contacted the Claimant by telephone and recorded that she advised them she did not have an attending physician. The medical was submitted back to the MRT with this information. On August 17, 2007 the MRT returned a decision (D-2) indicating the Claimant was found not to be disabled with the following statement:

Chronic back pain w/out neurologic changes. DFA-RT-5 says able to work. The above does not qualify for MAO-D.

- 4) The Claimant disputed the Department's claim that she indicated via telephone she had no attending physician. The Department agreed during the hearing to attempt to obtain medical from the Claimant's stated attending physician, Dr. [REDACTED] at [REDACTED] Hospital and resubmit to the MRT for reconsideration. The Claimant requested that she be allowed to take the medical forms to the physician herself for completion.
- 5) Claimant failed to return the medical information to the Department as agreed; therefore the case was not resubmitted to the MRT for reconsideration. A decision will be made based on the information submitted at the hearing.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) 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.
- 10) Testimony at the hearing revealed the Claimant has not worked since December 2005.
- 11) 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.
- 12) The medical submitted for consideration indicates the Claimant has chronic lower back pain without neurological changes, and knee pain. The general physical completed March 29, 2007 (D-8) indicates the Claimant is able to work full-time at her customary occupation or other full time work. The Claimant did not provide additional medical from her attending physician for consideration as agreed.

#### **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.
- 2) The medical information presented at this hearing does not support the requirement that the Claimant has a severe impairment which can be expected to last one year or result in death.

#### **IX. DECISION:**

It is the finding of the State Hearing Officer that the Claimant does not meet the definition of disability. The Department is upheld in the decision to deny the Claimant's application for the SSI-Related Medicaid Program.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 20th Day of November, 2007.**

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**Cheryl McKinney  
State Hearing Officer**