



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

January 8, 2007

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 19, 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  
Sue Radko, Family Support Specialist, DHHR

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 05-BOR-3356**

**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 December 19, 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 December 19, 2006 on a timely appeal, filed November 21, 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  
Sue Radko, 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 application for SSI-Related Medicaid based on disability not being met.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 12.2(A)  
20 CFR ' 404.1505, 404.1508, 404.1509, 404.1510, 404.1520, 404.1545 and 404.1572 Code of Federal Regulations

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

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

- D-1 Notification of denial dated November 16, 2006
- D-2 Decision issued by Medical Review Team, (MRT) dated November 13, 2006 (mental)
- D-3 Decision issued by Medical Review Team, (MRT) dated November 13, 2006 (physical)
- D-4 Memorandum from [REDACTED] County DHHR to MRT dated November 9, 2006
- D-5 Social Summary Outline dated November 9, 2006
- D-6 Report from primary care physician dated September 26, 2006
- D-7 Medical records from [REDACTED]
- D-8 Medical records from [REDACTED]
- D-9 WV Income Maintenance Manual, Chapter 12.2
- D-10 WV Income Maintenance Manual, Chapter 12.11

##### **Claimant's Exhibits:**

- C-1 Personal Medical Problems as listed by the claimant

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

- 1) The Claimant completed an application for SSI-Related Medicaid on September 26, 2006. He reported that he had recently been seen at [REDACTED] for high blood pressure and heart problems.
- 2) The claimant furnished records from [REDACTED]. The Department requested medical records from [REDACTED]. The Department also requested records from his primary care physician, Dr. [REDACTED].
- 3) The Department submitted the above medical records, previously submitted medical records and Social Summary to the Medical Review Team (MRT) on November 9, 2006.

- 4) MRT reviewed the Claimant's medical documentation and issued two decisions on November 13, 2006. Exhibit D-2, MRT decision is regarding the claim of mental disability. This decision states that the client is not mentally disabled. It further states, "deny ct is diagnosed Major Depression, Adult ADD& Alcohol Dependence. He exhibits non-severe functional limits. The second decision, Exhibit D-3, addressed physical disability. This decision states, "Psychiatric evaluation on 6/26/2006 states, major depressive disorder, recurrent, severe, currently treated and seems to be resolved." There is no new clinical documentation of a covered physical disability.
- 5) On November 16, 2006 the Department issued a denial notice to the claimant with the MRT decisions attached. The claimant requested a hearing on November 21, 2006.
- 6) The Claimant's Social Summary Outline, Exhibit D-5, reports that he is a 60-year-old male with a Bachelor of Arts Degree and that his most recent employment was as a Cab Driver from the year 1999 to 2003. The client reported, at the completion of the Social Summary, that his work limitations were due to Chronic Depression, Seasonal Affective Disorder, Anger Management, Adult Attention Hyperactive Disorder, Lung problems, Restless Leg Syndrome, High Blood Pressure, Heart Attacks, Irregular Heart Beat, Back problems and Neck Artery problems.
- 7) The Claimant testified that he cannot sit or stand for long periods due to back pain. He reports that he does not have any herniated discs or ruptured discs. He believes that his back pain is from a work related injury many years ago. He also reported some problems with his hip, knee and ankle. He testified that he has psychological disorders but that he can function reasonably well with proper medication. He states that his back, joints and psychological problems would keep him from being employable. He indicates that he believes his psychological problems are primarily what prevent him from holding a job especially if he is not properly medicated. He has been incarcerated due to violent episodes and he reports his attention span to be limited.
- 8) Recent medical records from [REDACTED] show in the year 2002 he had a Colonoscopy procedure with no major problems found. Also in 2002, he was at the ER due to problems encountered after stopping medications without doctor's instructions. In the year 2004, the Claimant was seen at [REDACTED] for a Carotid Ultrasound, which reported a 60% to 79% blockage, and for an EGD, which found review of systems to be unremarkable. In the year 2005, a Cardiolite Stress Test found the Carotid Artery to be blocked by only 40% to 50%. Also in 2005, a Colonoscopy found Diverticulosis and polyps. In the year 2006, the claimant was seen in the ER for breathing problems. X-Rays showed fractured ribs, which occurred from an altercation three weeks prior. Chronic lung disease was noted. Also in 2006, the Claimant was seen in the ER for dizziness, which resulted in a fall after exiting a Hot Tub. Claimant had been engaging in heavy exercise followed by a dry sauna and then a period in the Hot Tub. Hospital notes say he was experiencing Hypovolemic Shock and Acute Dehydration secondary to exercise and sauna/steam bath.
- 9) Medical records from [REDACTED] include 6/26/06 diagnosis of Major Depressive Disorder, recurrent, severe, currently treated and seems to be resolved. A 12/16/06 report from [REDACTED] reports results from a Psychiatric Evaluation. The evaluation found him to

have poor concentration, to be easily bored with jobs, disorganized and forgetful. Test results showed him to have a positive learning curve and his retention within normal range. It notes that his primary problem is in the areas of attention and organization due to high level of anxiety and emotional disturbance.

- 10) Medical records received from Dr. [REDACTED] Exhibit D-6, reveal no severe impairment which would prevent employment. Chronic Lung disease, mild to moderate carotid artery calcification and evidence of treatment for Psychological disorder is noted.
- 11) The Claimant described his work history to be primarily in Graphic Arts, which he did for approximately 20 years. He worked as a truck driver for 7 to 10 years and in the general labor field for 10 or more years.
- 12) 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.
- 13) 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 ' 404.1520)
- 14) 20 CFR ' 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)
- 15) 20 CFR ' 404.1508 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)

- 16) 20 CFR § 404.1545 Code of Federal regulations:  
Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations.
- 17) 20 CFR § 404.1510 Code of Federal regulations:  
Substantial gainful activity means work that –
  - (a) Involves doing significant and productive physical or mental duties; and
  - (b) Is done (or intended) for pay or profit.
- 18) 20 CFR § 404.1572 Code of Federal regulations:  
What we mean by substantial gainful activity.  
Substantial gainful activity is work activity that is both substantial and gainful:
  - (a) Substantial work activity. Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.
  - (b) Gainful work activity. Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.
  - (c) Some other activities. Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities or social programs to be substantial gainful activity.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Policy stipulates that disability is met if the individual 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. Federal Regulations dictate that an impairment must be severe in nature. Substantial gainful activity is described in Federal Regulations to be significant and productive physical or mental duties for pay or profit. It further explains that work can be substantial even if it is done on a part-time basis.
- 2) By using the Five step sequence outlined by Federal Regulation §404.1505 to determine disability we find :

Step one - This Claimant is not performing substantial gainful activity.

Step two - There is no severe impairment documented which has or can be expected to last one year or result in death therefore; there is no need to continue to step three.

- 3) The Claimant's account of his physical limitations due to back pain was noted even though medical documentation did not offer support of this. This limits his ability to sit or stand for long periods, but is not a documented severe impairment.
- 4) Medical documentation of the Claimant's mental abilities supports that with proper medication he is able to function reasonably well with some attention and organizational difficulties. His testimony supports this finding.
- 5) The evidence submitted at the hearing fails to identify a severe impairment that is expected to last for a continuous period of at least 12 months or result in death or that would prevent the Claimant from engaging in substantial gainful employment. This Claimant communicated exceptionally well during the hearing and seemed to process the information in a normal manner. Given his College education and work history, it is reasonable to believe that the Claimant's medical conditions should not impede his ability to engage in substantial gainful employment.

**IX. DECISION:**

It is the ruling of this Hearing Officer that based on the information gathered for review, the Department was correct in their determination. I further rule to **uphold** the action of the Department in denying the Claimant's application for 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 8th Day of January 2007.**

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**Sharon K. Yoho  
State Hearing Officer**