



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 Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 24, 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
Linda Lane, [REDACTED] DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-856

**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 19, 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 May 24, 2007 on a timely appeal, filed February 14, 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
_____, Legal Aid Representative
_____, Claimant's father
_____, Claimant's mother
Linda Lane, Income Maintenance Worker, _____ 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 List of Evidence
- D-3 Hearing Request form dated January 23, 2007
- D-4 IGBR29
- D-5 Appointment notice dated February 28, 2007
- D-6 Copy of Combine Application Form dated November 28, 2006
- D-7 Screener forms dated November 28, 2006
- D-8 Copies of Medical
- D-9 Copy of Notification letter dated December 28, 2006
- D-10 Copy of ES-RT-3 dated November 30, 2006
- D-11 Copy of Policy Sections
- D-12 Copy of CMCC case recordings
- D-13 Copy of MRT log
- D-14 Copy of Social Summary and Current Report
- D-15 Copy of Progress Notes
- D-16 Copy of Medline Plus documents
- D-17 Copy of ES-RT-3 dated June 14, 2007

Claimant's Exhibits:

C-1 Copy of "Living with Ulcerative Colitis"

VII. FINDINGS OF FACT:

- 1) The Claimant applied for SSI-Related Medicaid based on disability November 28, 2006. A Social Summary was completed. (D-14) The Claimant provided copies of medical records to the Department on November 29, 2006, and the information was submitted to the Medical Review Team (MRT) for consideration.
- 2) The Medical Review Team (MRT) decision (D-10) was received by the Department on December 21, 2006 indicating the Claimant was found to be not disabled. The determination from the MRT reads in part: "Records indicate there is no documentation of employment limitations; therefore, fails to meet MAO's requirements." A denial notification letter (D-9) was sent to the Claimant on December 28, 2006. The Claimant contacted the Department about this denial, and was offered the opportunity to provide additional medical so the case could be "reconsidered" by the Medical Review Team. The Claimant indicated he did not have any new medical and requested a hearing.
- 3) It was agreed during the hearing held on May 24, 2007 that the Department would obtain a new general physical on the claimant and resubmit to the Medical Review Team for reconsideration. The Claimant obtained a current physician's summary report (D-14) on May 24, 2007 and submitted this to the Department. The case was resubmitted to the Medical Review Team for consideration and subsequently determined (D-17) not to be disabled on June 14, 2007. The following information was added to the ES-RT-3 by the Medical Review Team: "No conditions noted that would be disabling. The above does not qualify for MAO-D."
- 4) The Physician's Summary (D-14) indicated the following:

Date of Last Patient Contact: 4-17-07

Diagnosis: CI Bleeding, Ulcerative Colitis, Migratory Arthritis

Prognosis: Good

Length of time incapacity/disability is expected to last: N/A

Employment limitation: N/A
- 5) The Claimant presented evidence in the form of a pamphlet from Crohn's and Colitis Foundation of America, which indicates a wide range of symptoms involved with the diagnosis of Colitis, ranging from mild to severe.

- 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 2004.

- 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 CI Bleeding, Ulcerative Colitis, and Migratory Arthritis. The Claimant's own physician indicates his prognosis is good and does not indicate any employment limitations.

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 finding 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.

**Cheryl McKinney
State Hearing Officer**