



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

July 18, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 17, 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 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,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Attorney at Law
Diana Burroughs, DHHR

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

Claimant,

Action Number: 07-BOR-932

**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 17, 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 17, 2007 on a timely appeal, filed March 12, 2007. It should be noted that this hearing was originally scheduled for May 2, 2007. The hearing was rescheduled for July 17, 2007 at the request of the Claimant.

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
_____, Attorney at Law

Diana Burroughs, 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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Denial Letters dated 02/27/2007 & 02/28/2007
- D-2 Sections 12.1a1, 12.3, 12.11, 12.2, 16.1, 16.4 and 16.9 of the West Virginia Income Maintenance Manual
- D-3 Medical Review Team Packet

VII. FINDINGS OF FACT:

- 1) The Claimant applied for SSI-Related Medicaid based on disability 01/05/2007. 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: "Recovery from ankle injury should be less than six months. The above does not qualify for MAO-D." (Exhibit D-3)
- 3) The Claimant was sent a denial notice on 02/27/2007 (Exhibit D-1). It reads in part:

"The State Medical Review Team has found that Claimant is not disabled/incapacitated." (Exhibit D-1)

The letter sent 02/28/2007 informs the Claimant that his application for Medical Assistance has been denied. (Exhibit D-1)
- 4) The Claimant is 24 years of age and completed the eleventh grade. He has received

training in carpentry. His past work consists of general labor, maintenance. He recently went to work at [REDACTED] doing maintenance work. He paints, fixes leaks, etc. In early December 2006, the Claimant was leaving a friend's house and fell down five cinderblock steps. He had a broken right foot and torn ligaments in his ankle. He is taking physical therapy. He is on his feet most of the day and his foot stiffens up. He needs to levitate the foot and use ice.

- 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) Testimony at the hearing revealed the Claimant recently went to work at [REDACTED] [REDACTED] No information was given as to the number of hours worked or wages.

- 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) The Physician's Summary from [REDACTED] dated 01/05/2007 reads in part:

Date of Last Patient Contact: 12/08/2006

Diagnosis: Chest pain, Atypical, multiple drug OD

Prognosis: Fair

Length of Time Incapacity/Disability is Expected to Last: Not Incapacitated

Employment Limitation: None

- 12) History and Physical from an emergency room visit at [REDACTED] Hospital dated 10/22/2006 reads in part:

Impression: 1) Multiple drug overdose; 2) Hypocalcemia; 3) Hypermagnesemia; 4) New onset atrial fibrillation; and Hypotension.

- 13) Radiology Report dated 12/13/2006 reads in part:

Right tib/fib and ankle demonstrates soft tissue swelling about the lateral malleolus. There is no definite evidence here for fracture or dislocation.

- 14) Radiology Report dated 12/17/2006 reads in part:

Right Ankle: AP, lateral and oblique views show decrease in the soft tissue swelling over the lateral malleolus compared to the study of 12/13/06. No obvious fracture, dislocation, or other abnormal bone findings noted otherwise.

Right Foot: AP, lateral and oblique views show no obvious fracture, dislocation, or other significant bony abnormalities.

Right Leg: AP and lateral views show no obvious fracture or other abnormal bone findings in the tibia and fibula as seen on 12/13/06.

- 15) Exam of right ankle by Dr. [REDACTED] dated 12/26/2006 reads in part that three views do show some soft tissue swelling over the lateral malleolus as well as anteriorly just above the tibiotalar joint. I do not see any fractures or dislocations however.

Right Foot: Four views are evaluated 12/26/2006. There is subtle cortical irregularity on the calcaneus view as well as a subtle lucency projecting through the calcaneus. The cortical irregularity could be explained by positioning.

Right Foot W 1 View Calcaneous: Four views are compared to a study obtained earlier on the same day. The suspicious sites seen previously are less conspicuous on the current exam and probably represented artifact. No definite findings for acute calcaneal fracture or other foot fracture are seen in this projection.

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 have 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 18th Day of July, 2007.

**Margaret M. Mann
State Hearing Officer**