



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

August 27, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 13, 2008. 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 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 meet the criteria necessary to establish disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **reverse** 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
Ann Hubbard, Income Maintenance Supervisor, DHHR

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

_____,
Claimant,

v.

Action Number: 08-BOR-1722

**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 August 27, 2008 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 rescheduled for and convened on August 13, 2008 on a timely appeal, filed April 5, 2008.

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
Ann Hubbard, I.M. 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 - 404.1545, Code of Federal Regulations
CFR Part 404, Sub Part P, Appendix 1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Memo to Medical Review Team (MRT) dated November 21, 2007
- D-2 Social Summary completed March 20, 2007
- D-3 General Physical dated November 9, 2007
- D-4 Physician's Summary dated October 29, 2007
- D-5 Memo from Medical Review Team (MRT) dated November 26, 2007
- D-6 Memo from MRT requesting psychological dated November 26, 2007
- D-7 Psychological dated February 13, 2008
- D-8 Memo from MRT dated March 3, 2008
- D-9 Notice of denial dated April 2, 2008
- D-10 WV Income Maintenance Manual §12.2
- D-11 WV Income Maintenance Manual §12.1

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on October 29, 2007. The caseworker completed a Social Summary, Exhibit D-2, on this date, which indicated that the claimant reported that he had Hepatitis C, memory problems and low back pain. An appointment was made for a General Physical to be completed on the claimant.
- 2) A General Physical, Exhibit D-3, was completed on November 9, 2007. The results of the physical were forwarded to the Department's Medical Review Team (MRT) along with the Physician's Summary, Exhibit D-4. On November 26, 2007, MRT responded with a decision that the Claimant was not physically unable to work. The response stated, "Client states back pain but records do not indicate neurological changes- fails to meet disability related to medical criteria". On the same date of November 26, 2007 MRT requested a Psychological report on the Claimant. The Psychological was completed in February 2007 and the results were sent to MRT. On March 3, 2008, MRT again issued a decision that the Claimant was not disabled. This decision addressed mental capacity. The Department issued a denial notice to the Claimant on April 2, 2008. The Claimant requested a hearing on April 5, 2008. This request was sent to the Hearing Examiner on July 14, 2008

- 3) The General Physical report, Exhibit D-3, reported that the Claimant's spleen was enlarged and tender. It reported that the Claimant experiences abdominal epigatric pain over spleen. Under diagnosis the physician notes, "Hepatitis C See Summary." The physician notes that the Claimant is not able to work full time at his customary occupation, operating a Fork Lift. He also notes that the Claimant is not able to perform other full time work. The physician reports that the duration of time in which the Claimant is unable to work full time is, "until hepatitis treatment is complete". The physician recommends a liver biopsy, CT /MRI of Liver, viral typing and a viral count. He notes that anti viral treatment would take 6 to 9 months.
- 4) In the Physician's Summary, Exhibit D-4, he again notes the Hepatitis C diagnosis. It includes a finding of chronic abdominal pain, weight loss, anxiety and drug abuse. The physician relates that prognosis is poor without treatment and good with treatment. This Summary notes that the Claimant's employment is limited by abdominal pain.
- 5) The Psychological, Exhibit D-7, notes some depression and a history of drug dependency. A WAIS-III test yielded a full scale IQ of 77 which is in the borderline range of intellectual functioning. This report notes that the claimant has problems maintaining his temper. He gets frustrated and verbally blows up. He reported to the psychologist that he does not think he can maintain employment due to his medical problems.
- 6) The Claimant has testified to his condition and his inability to work. He stated that his past work history was general labor that involved bending, lifting and pulling which he is not able to do now. He had some employment driving a forklift. He reported that he has just recently found a free clinic that he can get the needed anti-viral treatments for his Hepatitis C. He testified that he would have to go through three months of testing before the treatments could begin and that the treatments would last six to nine months following the testing. He reported that he has much pain due to his condition and that he has lost weight from 280 lbs to 183 lbs.
- 7) WV 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.
- 8) 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)
- 9) CFR Part 404, Sub Part P, Appendix 1, Listing of Impairments
6. Digestive System 5.05 Chronic Liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease)
14. Viral Infections: 5. Hepatitis, as described under the criteria in 5.05
 - 10) 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)
 - 11) 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) Federal regulations 20 CFR 404.1510 stipulates that a severe impairment must exist which is expected to last one year or result in death. The evidence submitted at the hearing supports that the claimant met these criteria. In following the five-step sequence outlined in Federal regulations 20 CFR 404.1520 we first find that the Claimant is not performing substantial gainful activities. Secondly, we find from the evidence and testimony that he does have a severe impairment that is expected to last at least one year. He therefore meets the disability criteria. Going on to the third step, we find in sub part B appendix 1 of Federal Regulations CFR part 404 that the condition of Chronic Active Hepatitis is a listed impairment. The General Physical and Physician's Summary confirm that this Claimant cannot perform his former work due to symptoms of his Hepatitis.
- 2) Evidence and testimony support that this Claimant's disability involves his Hepatitis C condition and not his low back pain for which the Medical Review Team addressed in its November 26, 2007 determination. Although the General Physical and the Physician's Summary clearly addressed the Hepatitis C as the disabling condition, MRT states in their decision, "client states back pain but records do not indicate neurological changes – fails to meet disability related Medicaid criteria". It is not clear whether MRT considered the Hepatitis C in their disability determination. The Claimant does

not suggest that his back pain is keeping him from employment, but rather the pain from his Hepatitis C.

- 3) The Physician Summary and the Claimant's testimony support that the testing and anti viral treatment involved in addressing the Hepatitis condition and symptoms would together last at least 12 months. The claimant had a diagnosed Hepatitis C diagnosis in November 2007 and continues to have this disabling condition as of the present. His disability has lasted since before November 2007 and will continue until testing and treatment is complete.

IX. DECISION:

Medical documentation submitted for review meets the requirements necessary to establish a disability for the purpose of the Medicaid Program.

It is the ruling of this Hearing Officer that based on the information gathered for review, the Department was incorrect in their determination. I further rule to **reverse** the action of the Department in denying the application for SSI-Related Medicaid benefits. The Department should make contact with the Claimant to assess medical bills and determine a date for coverage to begin.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th Day of August 2008.

**Sharon K. Yoho
State Hearing Officer
Member State Board of Review**