



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 21, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to deny your SSI-Related Medicaid application based on a disability determination by the state Medical Review Team.

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 is based on current policy and regulations. Some of these regulations state as follows: 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 (West Virginia Income Maintenance Manual Section 12.2 A).

The information submitted at your hearing revealed that you do not meet the medical criteria necessary to qualify for SSI-Related Medicaid.

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny your SSI-Related Medicaid application.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Eldon Belcher, Economic Service Supervisor

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

_____,
Claimant,

Action Number: 08-BOR-2282

**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 November 13, 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 convened on November 13, 2008 on a timely appeal, filed October 8, 2008.

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

Melinda Mills, Economic Service Worker
Eldon Belcher, Economic Service Supervisor

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether or not the Department was correct to deny Claimant's SSI-Related Medicaid application.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Policy Manual , Section 12.2 A
20 CFR § 404.1505 - 404.1545 & 20 CFR § 404.1594, Code of Federal Regulations

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Department's Case Summary
- D-2 Case Comments (CMCC) from Rapids Computer System
- D-3 Medical Review Team Transmittal Form
- D-4 Social Summary Form
- D-5 Medical Review Team Packet
- D-6 Notification Letter dated October 3, 2008
- D-7 Notification Letter dated October 6, 2008
- D-8 Medical Review Team Decision
- D-9 West Virginia Income Maintenance Manual § 12.2, 12.3, 12.8, 12.10, 12.11 and 12.12

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant applied for SSI-Related Medicaid on July 18, 2008. A referral was made to the state Medical Review Team (MRT) for a disability determination. MRT determined Claimant not to be disabled in their decision dated October 2, 2008 which read in part (D-8):

DFA-RT-8a of 7/7/08 states prognosis is "fair to good". The above does not qualify for MAO-D (Medicaid based on disability).

Claimant was notified by denial letters dated October 3 and October 6, 2008 (D-6 and D-7) that his SSI-Related application had been denied.

- 2) Claimant testified that he has severe neck and back pain. It is a dull pain if he is inactive but as soon as he does any physical activity, it turns into a sharp pain. The pain is from his shoulder blades to his neck. He also has cracked vertebrae in his lower back. Both of

Claimant stated he takes Nexium for his stomach and had been using Ultram and Ibuprofen for pain but stopped taking them when they didn't work. He recently started taking Valium and Lexapro for depression.

Claimant stated he last worked the summer of 2007. His customary work is carpentry and construction. He has a 7th grade education. He has been denied Social Security Disability and is appealing the denial.

Claimant stated he cannot lift or squat or use any type of hand tools due to the numbness in his hands.

- 3) Medical records for Claimant were submitted to MRT from Dr. [REDACTED] The DFA-RT-8a as completed by Dr. [REDACTED] states in pertinent parts (D-5):

Date of Last Patient Contact: 7/7/08

Diagnosis: Degenerative Joint Disease (DJD), Gastroesophageal Reflux Disease (GERD)

Prognosis: Fair to good

Length of Time Incapacity/Disability is Expected to Last: Unknown

Employment Limitations: No heavy lifting

Records from Dr. [REDACTED] also indicate Claimant had a pinched nerve as found on X-Rays done in July 2008.

- 4) West Virginia Income Maintenance Manual § 12.2 A states:

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.

- 5) The Federal definition of disability is found in 20 CFR ' 404.1505 states:

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 dual functional capacity, age, education, and past work experience? (20 CFR ' 404.1520f)

- 6) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations states:

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)

- 7) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations states:

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) Claimant is not in a substantial gainful activity as defined 20 CFR 404.1510?
- 2) Claimant's physician, Dr. [REDACTED] indicated the length of time Claimant's condition is expected to continue as unknown. However, according to Claimant's testimony, his condition has already lasted for at least 12 months.
- 3) Claimant does not have a severe listed impairment as found in 20 CFR Part 404, Sub Part P, App. 1.
- 4) Employment limitations as indicated by Dr. [REDACTED] are no heavy lifting. Claimant's customary work is in carpentry and construction. Claimant would be unable to continue in this line of work.
- 5) Although Claimant may not be able to continue working in his customary field, Claimant would be able to perform sedentary or light work. Claimant does not meet the medical criteria to be eligible for SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to deny Claimant's SSI-Related Medicaid application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of November, 2008.

Kristi Logan
State Hearing Officer