



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 14, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 3, 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 not meet the criteria necessary to establish 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
Daniel Pyles, Income Maintenance Supervisor, DHHR

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

_____,
Claimant,

v.

Action Number: 07-BOR-2320

**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 January 3, 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 originally scheduled for December 4, 2007 and the claimant failed to appear. The hearing was rescheduled for and convened on January 3, 2008 on a timely appeal, filed October 19, 2007.

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
Daniel Pyles, 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

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 WV Income Maintenance Manual §12.2
- D-2 WV Income Maintenance Manual §12.11
- D-3 Notice of denial dated September 20, 2007
- D-4 Memo from Medical Review Team (MRT) dated August 27, 2007
- D-5 Memo from Medical Review Team (MRT) dated June 21, 2007
- D-6 Memo to MRT dated June 15, 2007 requesting disability determination
- D-7 Radiology findings from MRI completed August 17, 2007
- D-8 MRTs request to caseworker for completion of MRI dated 7/23/07
- D-9 MRTs request to Community Service Manager (CSM) for MRI
- D-10 [REDACTED] Physician's note dated June 4, 2007
- D-11 MRTs request of the caseworker for Psychiatric Evaluation dated Feb. 8, 2007
- D-12 MRTs request of CSM for Psychiatric Evaluation dated January 29, 2007
- D-13 Memo to MRT dated January 26, 2007
- D-14 Social Summary completed January 19, 2007
- D-15 Physician's Summary dated January 19, 2007
- D-16 General Physical dated January 23, 2007

VII. FINDINGS OF FACT:

- 1) The claimant completed an application for SSI-Related Medicaid on January 19, 2007. The caseworker completed a Social Summary , Exhibit D-14, on this date which indicated that the claimant had physical and mental problems which were hampering his ability to work. The caseworker made an appointment for a General Physical for the claimant.
- 2) A General Physical, Exhibit D-16, was completed on January 23, 2007. The results of the physical was forwarded to MRT on January 26, 2007. MRT responded on May 14, 2007 requesting that a Psychological be completed on the claimant. The Psychological report, Exhibit D-10, was received and forwarded to MRT on June 11, 2007. MRT responded on August 10, 2007 with a request for an MRI of the cervical spine. This MRI was completed on August 17, 2007 and the caseworker submitted the results to MRT. MRT responded on September 19, 2007 with a decision that the claimant was

found to not be disabled. Exhibit D-4 stated, "No conditions noted that would meet a disabling rating. The above does not qualify for MAO-D."

- 3) The General Physical report, Exhibit D-16, stated that the claimant has limited range of motion in neck. It states that he has neck and shoulder pain. It lists major diagnosis to be depression and minor diagnosis to be headaches. This report goes on to state that the claimant is not able to work at his customary occupation or like work and that he is not able to perform other full time work. It reports that he should avoid lifting, prolonged standing, and walking. The report states that the duration of his disability to be one year.
- 4) The Psychological report, Exhibit D-10, states that the claimant has no psychiatric disability. The claimant did not dispute this finding.
- 5) The MRI findings, Exhibit D-7, for the most part were noted to be unremarkable. The report states that the claimant has severe disc space narrowing and disc desiccation and spondylosis at C4-C5 and C5-C6. Generalized facet joint osteoarthritis was noted. The Impression described was: "1. Combination of spondylosis and budging annulus and uncovertebral arthrosis at C5-C6 level causing mild cord impingement as well as severe bilateral neural foraminal stenosis. 2. Uncovertebral arthrosis at C4-C5 level causing moderate left neural foraminal stenosis.
- 6) The claimant's testified to his condition and his inability to work. He stated that he could not turn his head around to drive and that he has severe headaches every night. He indicated that he has a fear of becoming paralyzed with employment activities.
- 7) The claimant is 59 years old and is a High School graduate. His work history has been in manual labor. He reports that he never learned anything about computers. He worked in construction and in recent years was self-employed doing odd jobs such as shoveling snow, grass mowing and painting. He had some welding training at a Vocational school, which was connected with his High School education. He states that he has not done any work for months.
- 8) 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.
- 9) 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)
- 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 fails to identify a severe impairment. Federal regulations 20 CFR 404.1520 stipulates that if impairments or combination of impairments do not significantly limit physical or mental ability to do basic work activities then the finding will be that there is not a severe impairment and therefore disability is not met. The MRI report indicates that the claimant's back condition is causing **mild**, (emphasis added) cord impingement, **severe**, (emphasis added) bilateral neural foraminal stenosis, and **moderate** (emphasis added) left neural foraminal stenosis. While bilateral neural foraminal stenosis (spinal canal narrowing) is described as severe, the cord impingement due to this narrowing is described as mild. The Medical Review Team which consists of a group of physicians has determined that this condition while causing pain is not a severe impairment to his engaging in substantial gainful employment activity.
- 2) Based on the documentation in which the Department has been able to obtain the action to deny SSI related Medicaid is supported. The Department's Medical Review Team was thorough in their assessment of this individual. They requested additional evidence before reaching their decision that this claimant is able to engage in substantial gainful employment. The claimant presented himself at this hearing as an intelligent individual with very good communication skills. While he may not be able to perform manual labor without pain, he should be able to engage in substantial gainful employment. No

medical evidence was received to indicate that this claimant could become paralyzed due to his current condition.

IX. DECISION:

Medical documentation submitted for review, fails to satisfy the severity 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 correct in their determination. I further rule to **uphold** the action of the Department in denying the 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 14th Day of January 2008.

Sharon K. Yoho
State Hearing Officer