



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

February 25, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 22, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your SSI-Related Medicaid application based on failure to meet disability criteria.

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: 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).

The information which was submitted at your hearing revealed that medical documentation did not sufficiently show a severe impairment that would prevent you from performing substantial gainful employment.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your October 2007 SSI-Related Medicaid application.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Fred Burns, Economic Service Supervisor, DHHR

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

Claimant,

V.

Action Number: 07-BOR-807

**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 February 22, 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 February 22, 2008 on a timely appeal, filed December 10, 2007.

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

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 the Claimant meets the medical eligibility criteria necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Policy Manual , Section 12.2
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 Notice of Denial dated November 26, 2007
- D-2 ES-RT-3 Cover Letter from The Medical Review Team dated October 24, 2007
- D-3 DFA-RT-5 General Physical Form as completed by Dr. [REDACTED] on October 18, 2007
- D-4 Correspondance from Dr. [REDACTED] dated December 13, 2007

Claimants' Exhibits:

- C-1 Radiology Report from [REDACTED] dated October 23, 2007 for X-Rays completed on Claimant's hips and spine
- C-2 Outpatient Lab Report from [REDACTED] dated October 23, 2007 showing results of blood work
- C-3 Physician's notes from Dr. [REDACTED] dated October 18 and 30, 2007; November 15, 2007; December 13, 2007 and February 13, 2008.

VII. FINDINGS OF FACT:

- 1) Claimant applied for SSI-Related Medicaid on October 4, 2007. The process was initiated for Claimant to be evaluated by the Medical Review Team, hereinafter MRT, to be evaluated for disability.
- 2) Claimant had a general physical completed by Dr. [REDACTED] on October 18, 2007 which was then forwarded to MRT on October 22, 2007 (Exhibit D-1).
- 3) The Department received MRT's decision via the ES-RT-3 (Exhibit D-2) on November 21, 2008 which stated:

No conditions noted in the record that would meet a disability rating. The above does not qualify for MAO-D.

- 4) The Department issued a Notice of Denial dated November 26, 2007 (Exhibit D-1) which reads in part:

Your application for Medicaid has been denied effective November 21, 2007.

The Medical Review Team finds you are not disabled.

Policy: West Virginia Income Maintenance Manual Section 12.2

- 5) The Claimant testified that he last worked in January 2007. He is unable to work due to arthritis in his back and a hip defect he has had since birth. Claimant stated he has pain and cannot sit or walk for very long periods. He also experiences numbness of his hands and legs. Claimant is prescribed medicine to manage the pain as well as high blood pressure and high cholesterol medicine.
- 6) 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.
- 7) 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 dual functional capacity, age, education, and past work experience? (20 CFR ' 404.1520f)
- 8) 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)
- 9) 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) The Claimant is not performing substantial gainful activity as defined in 20 CFR ' 404.1510.
- 2) The Claimant has an impairment that is expected to last one year as noted by Dr. [REDACTED] on the general physical (Exhibit D-3).
- 3) Evidence fails to establish a severe listed impairment as set forth in the regulations.
- 4) The Claimant revealed a work history of a warehouse worker and a laundry worker that ended in January 2007. Such work is of an unskilled nature.
- 5) The Claimant is 48 years old, qualifying him under the regulations as A Younger Person. He has a high school diploma and is literate, qualifying under regulations with a high school education. Claimant's work history reveals unskilled work.

The Major Diagnosis as indicated on the general physical is hypertension. [REDACTED] also notes bilateral hip pain and short leg syndrome. The radiology report for X-Rays done of Claimant on October 23, 2007 (Exhibit C-1) as order by Dr. [REDACTED] supports Claimant's testimony that he has a hip defect. The report states in part:

There is a marked deformity of the right acetabulum with the right femoral head remaining seated within the acetabulum but with marked deformity of the right femoral head.

The report continues that other areas of the hip are normal:

The proximal femurs are otherwise intact. Bony pelvis is intact. Left hip joint space is maintained.

In regards to Claimant's back, the Radiology Report states:

Anterior and lateral osteophyte formation (bony growth) is noted on vertebral bodies of the lumbar spine. Lumbar vertebral bodies are intact. Lumbar intervertebral disc spaces are maintained. Curvature and alignment of the lumbar spine is normal. No spondylolysis or spondylolisthesis is seen. Sacroiliac joints are intact bilaterally.

- 6) The major diagnosis from the general physical is hypertension. Dr. [REDACTED] writes in correspondence (Exhibit D-4) that Claimant suffers from chronic hip pain from a birth deformity and high cholesterol.

It is evident that Claimant has a deformed hip joint that has been present since birth that involves pain and has hypertension. However, based on age and residual functional

capacity Claimant could perform substantial gainful employment of at least sedentary to light activity.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision to **deny** Claimant's October 2007 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 25th Day of February, 2008.

Kristi Logan
State Hearing Officer