



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

July 15, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 23, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your 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. 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 last for a continuous period of not less than 12 months. [West Virginia Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing reveals that you do not meet the criteria necessary to establish a disability for Medicaid purposes.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in denying your November 2008 application for SSI-Related Medicaid.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Ann Hubbard, ESS, DHHR

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

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**Claimant,**

**v.**

**Action Number: 09-BOR-1097**

**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 15, 2009 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 via videoconference on June 23, 2009 on a timely appeal filed April 23, 2009.

**II. PROGRAM PURPOSE:**

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

-----, Claimant's niece

Ann Hubbard, Economic Services Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 its action to deny the Claimant's application for SSI-Related Medicaid based on failure to meet disability criteria.

#### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 12.2(A)  
20 CFR Section 404.1505 - 404.1545, Code of Federal Regulations

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 Social Summary Outline
- D-2 MRT transmittal form, Physician's Summary, General Physical report, hospital records
- D-3 MRT decision issued December 1, 2008
- D-4 MRT request for Psychological Evaluation
- D-5 MRT transmittal form and Psychological Evaluation
- D-6 MRT decision dated January 26, 2009
- D-7 Notice of Decision dated March 11, 2009
- D-8 West Virginia Income Maintenance Manual Section 12.2(A)
- D-9 Hearing Summary

#### **VII. FINDINGS OF FACT:**

- 1) The Claimant, who is 50 years old, completed an application for SSI-Related Medicaid on November 3, 2008.
- 2) The Department requested medical records from [REDACTED] Hospital (D-2) and submitted the records to the Medical Review Team, hereinafter MRT, on November 17, 2008. On December 15, 2008, the Department received a Physician's Summary (D-2) which lists the date of last patient contact as November 26, 2008. The diagnosis section specifies "MRSA osteomyelitis right first metatarsal." The physician listed the Claimant's prognosis as "good" and stated that the Claimant's disability was expected to last six months. Under employment limitations, the physician wrote that the Claimant must wear wide toe shoes. The Physician's Summary and a General Physical exam report (D-2) were forwarded to the MRT.
- 3) The MRT reviewed the Claimant's medical documentation and determined that the Claimant is not physically disabled in a decision issued December 1, 2008 (D-3). The decision states:

No physical disabilities noted. The above does not qualify for  
MAO-D.

- 4) The MRT requested and the Claimant underwent a Psychological Evaluation (D-5) on December 19, 2008. The report lists diagnoses of adjustment disorder with depressed mood and borderline intellectual functioning. The Department submitted this information to the MRT for evaluation of possible mental disability.
- 5) On January 26, 2009, the MRT provided a decision (D-6) denying the existence of a mental disability. The decision states:

Deny ct. is dxed adjustment d/o and BIF. Ct exhibits moderate functional limits which would not prevent work activity.
- 6) The Department sent the Claimant a Notice of Decision dated March 11, 2009 (D-7) informing her of the Medicaid denial.
- 7) The Claimant testified that she had a diabetic ulcer on her right foot in 2008 and developed a MRSA infection which resulted in a toe amputation. The Department's Social Summary Outline (D-1) states that the Claimant had been employed at printing businesses since 1993 and was last employed in August 2008 when she ceased work due to health problems. The Claimant testified that she had also worked at a clothing factory.
- 8) The hearing record remained open until June 30, 2009 so that the Department could forward all medical records to the Hearing Officer for consideration.
- 9) West Virginia Income Maintenance Manual Section 12.2 (A) (D-8) states the definition of disability for Medicaid purposes is the same as the definitions used by the Social Security Administration 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.
- 10) The Federal definition of disability is found in 20 CFR Section 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 Section 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)

11) 20 CFR Section 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)

12) 20 CFR Section 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 Section 404.1510.
- 2) While the Claimant has suffered an infection resulting in amputation of a toe, evidence submitted in conjunction with her Medicaid application fails to substantiate the existence of a severe impairment which is expected to last one year or result in death. The Claimant's medical doctor estimated the length of her disability as six months and the only employment limitation cited was the need for wide toe shoes. The Psychological Evaluation listed no severe mental impairments.
- 3) The Department followed proper procedures in determining that the Claimant does not meet disability requirements.

## IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the action of the Department in denying the Claimant's application for SSI-Related Medicaid.

## X. RIGHT OF APPEAL:

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 15th Day of July, 2009.**

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**Pamela L. Hinzman**  
**State Hearing Officer**