



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

September 16, 2009

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for SSI-Related Medicaid based on a disability.

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 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 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. [WV Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing fails to demonstrate that you meet the criteria necessary to establish a disability as defined by the SSI-Related Medicaid Program.

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

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Pc: Erika H. Young, Chairman, Board of Review  
Mark Paree, ESW, DHHR

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

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**Claimant,**

**v.**

**Action Number No.: 09-BOR-1473**

**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 September 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 on August 25, 2009 on a timely appeal filed June 2, 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 witness

Mark Paree, ESW, DHHR

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its action to deny the Claimant's application for SSI-Related Medicaid based on a disability.

#### **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 ES-RT-3, Disability /Incapacity Evaluation (signed by Review Team Examiner 6/12/09)
- D-2 ES-RT-3, Disability / Incapacity Evaluation dated 3/19/08 – Request for additional medical information, accompanied by the medical documentation requested
- D-3 Medical Review Team Transmittal (3/18/09) accompanied by the Social Summary Outline (3/12/09) and medical records reviewed by MRT (initial application)
- D-4 Notice of Denial dated 6/15/09
- D-5 West Virginia Income Maintenance Manual, Chapter 12

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

- 1) The Claimant completed an application for SSI-Related Medicaid on March 10, 2009. The Claimant's medical records were secured and forwarded to the Medical Review Team, hereinafter MRT, for a disability evaluation on or about March 18, 2009. The medical information was accompanied by a Social Summary and has been identified as Exhibit D-3.
- 2) The MRT requested additional medical information on 3/24/09 and this information (x-ray of right knee) was acquired by the Department and submitted to the MRT for review (Exhibit D-2).
- 3) In Exhibit D-1, the MRT indicates that the medical documentation submitted for review is sufficient to complete a disability determination and noted in section III that the Claimant is not disabled. Section IV, B., is marked to indicate the Claimant does not have a medically determinable impairment or combination of impairments which significantly limit his ability to perform basic work activity. Section IV, E., states – "Right knee strain would not qualify for a disability rating. The above does not qualify for MAO-D." On June 15, 2009 the Claimant was notified of his application denial via Exhibit D-4.
- 4) The Claimant is a 32 years old. He received his GED in 1991 and has completed approximately 90 college semester hours. He last worked in May 2007 as a kitchen and bathroom installer but was only able to work a couple days after the auto accident that caused a left knee injury. He has worked previously at [REDACTED] warehouse, as a cook and he has worked in the Maintenance Department at [REDACTED]

- 5) The Claimant contends that he has been unable to work since May 2007. He indicated that he worked a couple days after the auto accident in May 2007 but he was in too much pain. The Claimant contends that he is unable to perform any of his previous work activities due to the mobility issues related to his knee problems and he not suited to work in an office environment due to his ADD (Attention Deficit Disorder). In the Social Summary completed at the time of application, the Claimant was ambulating with the use of crutches and indicated he had torn tendons and problems with the meniscus in his knees. The Claimant reported that he has had arthroscopic surgery (left knee) but feels his condition is not getting any better. It should be noted that there is no documentation to indicate ADD was reported at the time of application and there is no clinical evidence to support this claim.
- 6) Exhibit D-3 includes a Physician's Summary (DFA-RT-8a) completed by Dr. [REDACTED] office on 3/16/09. Dr. [REDACTED] indicated that he has seen the Claimant on two occasions (1/8/09 and 1/16/09) and reported the Diagnosis is "Right knee pain due to small tear in Fibular collateral ligament; mild bursitis." The Prognosis indicates the Claimant needs an orthopedic evaluation and that his incapacity / disability is expected to last a "minimum of 3 months." Employment limitations include no ambulation, no bending, lifting, squatting, etc.

The Claimant reported during a visit to [REDACTED] on January 8, 2009 that he had surgery on his left knee in 2007 but reinjured it in 2008. This report notes "Knee was better after surgery until he reinjured it." The report goes on to note that the Claimant had been compensating [for his left knee] and heard a "pop" in his right knee with extreme pain 2 weeks ago.

An MRI was completed on the Claimant's right knee at [REDACTED] Hospital on 2/12/09. The MRI report notes - IMPRESSION: "Probable small tear with edema at the femoral insertion of the fibular collateral ligament. Mild medial collateral bursitis. Thinning of the medial patellar chondroid matrix." The report further indicates there is no lateral or medial meniscal tears and anterior and posterior cruciate ligaments are intact.

The MRT requested the results of an x-ray to further evaluate the Claimant's knee. The x-ray was completed on 2/12/09 (same day as the MRI) and states under the findings: "View of the orbits was obtained prior to MRI scan. No evidence of metallic foreign material or other significant radiopacity is demonstrated in the region of the orbits. The IMPRESSION notes - Negative orbits view for metallic foreign body.

- 7) West Virginia Income Maintenance Manual, Chapter 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) The Code of Federal Regulations, found at 20 CFR §404.1509, & 404.1520, provides the following guidelines:  
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)
- 10) 20 CFR §404.1508 - 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.

## **VIII. CONCLUSIONS OF LAW:**

- 1) The regulations provide that 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. Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
- 2) Testimony presented by the Claimant is compelling, however, there is insufficient medical evidence to corroborate the Claimant's purported disability. The Claimant reported that he had reinjured his left knee in 2008 during a visit to [REDACTED] on January 8, 2009, however, there is no medical evidence to indicate this injury has been evaluated. The Claimant also reported during the January 2009 medical appointment that he suffered an injury to his right knee just two weeks prior to his visit, however, no clinical evaluation has been done.

The medical evidence confirms a “small tear with edema” at the femoral insertion of the fibular collateral ligament in his left knee, however, the Claimant’s physician noted that the Claimant’s disability / incapacitated is expected to last a minimum of three (3) months. This injury, considered independently (with no evidence of left knee injury or ADD), fails to meet a disability rating and clearly fails to meet the 1-year duration requirement.

A review of the five-step disability process reveals that the Claimant (#1) is not currently employed. However, (#2) In the absence of evidence to indicate the Claimant has a severe impairment that has lasted or is expected to last for at least 12 months (or result in death), the duration requirement cannot be met.

The regulations that govern the SSI-Related Medicaid Program require that 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.

- 3) Based on the evidence, the Department has followed proper procedure in determining that the Claimant is not disabled.

**IX. DECISION:**

It is the decision of this Hearing Officer to **uphold** the action of the Department in denying your 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 16<sup>th</sup> Day of September 2009.**

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**Thomas E. Arnett  
State Hearing Officer**