



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General**

**Joe Manchin III
Governor**

**Board of Review
P.O. Box 1736
Romney, WV 26757**

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

December 22, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 1, 2009. Your hearing request was based on the Department of Health and Human Resources' determination that you are not disabled to meet program requirements for the SSI-Related Medicaid Program.

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. These regulations provide 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)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for the SSI-Related Medicaid Program.

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

Sincerely,

Eric Phillips
State Hearing Officer
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review
-----, ESS

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

-----,

Claimant,

v.

Action Number: 09-BOR-2076

**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 December 22, 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 December 1, 2009 on a timely appeal, filed October 8, 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
-----, Claimants witness and Grandmother
-----, Claimants witness and Grandfather
-----, Economic Service Supervisor

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Claimant meets the medical eligibility requirement necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance 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 Hearings Summary
- D-2 Verification Request for Claimant to completed a General Physical dated January 20, 2009
- D-3 WVDDHR Disability/Incapacity Evaluation Social Summary Outline with supporting documentation dated February 20, 2009
- D-4 Additional Medical Information submitted for Disability/Incapacity Evaluation dated February 27, 2009
- D-5 WVDHHR Mental Disability/Incapacity Evaluation request for Psychological Report
- D-6 Additional Medical Information submitted for Disability/Incapacity Evaluation dated June 17, 2009 (Psychological Report from [REDACTED] M.S. Psychologist)
- D-7 Decision from Medical Review Team dated March 6, 2009 and June 24, 2009
- D-8 Notice of Decision dated July 29, 2009
- D-9 West Virginia Income Maintenance Manual Chapter 12.2

Claimants' Exhibits:

- C-1 Summary of -----'s living situation dated January 5, 2009

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application to determine his eligibility for the SSI-Related Medicaid Program on January 20, 2009. The Claimant reported during his application that he was not under a physician's care and he was subsequently issued Exhibit D-2, Request for General Physical. The Claimant completed the Department's request for a General Physical on February 10, 2009 and forwarded the results obtained from the examination to the Department on February 13, 2009. This examination was completed by [REDACTED] M.D. and lists the Claimant's diagnosis as osteoarthritis and right knee pain. The physician indicated during his examination that the Claimant was not able to work full-time at his customary occupation of factory work. On February 20, 2009, the Department submitted Exhibit D-3, Disability/Incapacity Evaluation to the Medical Review Team, hereinafter MRT, to determine if the Claimant was disabled under program guidelines.

Exhibit D-3, Disability/Incapacity Evaluation Social Summary Outline, lists the Claimant's reason for application as:

Client was involved in a motorcycle accident & since then he has had pain in his right knee, foot & shoulder. Also complains of lower back pain. Client can not sit or stand for long periods. He can not bend or reach.

It shall be noted that the only information submitted with the Claimant's Disability/Incapacity Evaluation was the General Physical completed February 10, 2009.

- 2) On February 27, 2009, the Department submitted Exhibit D-4, Additional Medical Information to be evaluated along with the General Physical. Additional Medical Information submitted on February 27, 2009 consisted of radiology reports of the Claimant's ankle and knee as well as Emergency Room reports from an assault on the Claimant.
- 3) On March 6, 2009, the MRT requested additional information to process a determination of disability on the Claimant. Exhibit D-5, Mental Disability/Incapacity Evaluation requested that the Claimant undergo a Psychological Report, as the information submitted previously was not sufficient to permit a determination of the Claimant's disability.
- 4) A psychological examination was completed for the Claimant on June 8, 2009 and this information was submitted to the MRT on June 17, 2009. Exhibit D-6, Psychological Report from [REDACTED] M.S. Psychologist documents in part:

(-----'s) Last employment was at [REDACTED] in [REDACTED] as a night stocker. He said he only lasted one night on the job, walked off because he had been drinking. He reports that he has obtained other jobs in the past but simply never showed up to work because of his drinking. His longest employment was from 1995-1998 at [REDACTED] in [REDACTED]. He said he was able to hold this job because his drinking was not a serious problem at that time.

He reports a positive history of substance abuse, said he started drinking when he was 16 years old, but that his abuse did not become a serious problem until "a few years ago."

During the psychological examination, the Claimant reported that he had medical issues with his right knee and that he had applied for Social Security Disability. The Psychologist did not indicate that the Claimant had any inability to work due to mental issues.

- 5) In response to information submitted to the MRT, an ES-RT 3 Disability/Incapacity Evaluation form was completed on March 6, 2009 (Exhibit D-7) which indicates that the Claimant is not physically disabled for the SSI-Related Medicaid Program.

On June 24, 2009, a DFA-RT-3M Disability/Incapacity Evaluation which evaluates an individual's mental impairments was completed in response to the Claimant's Psychological Report completed on June 17, 2009. Section IV. B notes the client does not have a medically determinable impairment or combination of impairments which significantly limits his ability

to perform basic work activity; and Section IV E. states “deny CT [client] is dxed [diagnosed] alcohol depend adjustment d/o [disorder]. He exhibits non severe functional limits.”

- 6) On July 29, 2009, the Department issued the Claimant Exhibit D-8, Notice of Decision this document states in pertinent part:

Your application for Medicaid has been denied.

Here is why:

We have sent your medical records to the Medical Review Team (MRT). Based on the information, the MRT has decided that you are not physically or mentally disabled at this time.

- 7) The Claimant testified that his primary reason for applying for SSI-Related Medicaid is based on his physical disabilities. The Claimant purported that he suffers from severe shoulder and knee pain and has applied for Social Security Disability which has been denied and he is currently appealing the decision. He stated that he was in a motorcycle accident in which he sustained injuries to his right knee. He testified that he has wires in his knee and that some of the wires have since broken causing him a great deal of pain and discomfort. The Claimant further testified that he sustained his injuries to his shoulder as a result of a fall. He contended that he is in great need of Medicaid assistance as he cannot stand and walk for extended amount of time. The Claimant’s witnesses’ presented testimony in support of the Claimant’s claim that he is unable to work. The witnesses’ testified that the Claimant cannot lift his arms above his head and stand for long periods of time. The Claimant indicated that he has had previous surgeries on his right knee and his in need of another surgery to mend the damaged wires currently in his knee. The Claimant opined that if he was approved for Medicaid assistance he would be able to have the necessary surgeries and return to work. The Claimant submitted Exhibit C-1, Summary of the Claimant’s living situation, into the hearing record which illustrated the Claimants dependence on family and friends to provide his basic necessities since 2002.

The Department contended that if the Claimant were approved for Medicaid assistance he would be able to obtain the necessary surgeries and be able to return to work in less than twelve months therefore not meeting the definition of disability as defined in the West Virginia Income Maintenance Manual. The Department further testified that the Claimant informed the Psychologist during his evaluation that many of the reasons as to why he was unable to work were due to his dependence on alcohol.

- 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 § 404.1509, & 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, 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) Regulations that govern the SSI-Related Medicaid Program require that an eligible individual must have a severe impairment(s) and meet the duration requirement in order for there to be a disability finding. 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.
- 2) The Claimant is currently not performing any substantial gainful activity (employment) and has not been self-sufficient for a number of years. There is no question that the Claimant suffers

from discomfort and limited abilities, however, the clinical evidence submitted to the MRT failed to demonstrate a severe impairment. More specifically statements to the evaluating psychologist indicated that the Claimant was unable to maintain employment due to his alcohol dependence and clinical evidence submitted for review did not indicate a severe impairment that limited the Claimant's ability to perform past work activities.

- 3) Based on the documentation provided, the Claimant does not meet the definition of disability as pursuant to SSI-Related Medicaid Requirements.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant application for SSI-Related Medicaid assistance.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ day of December 2009.

**Eric L. Phillips
State Hearing Officer**