



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

April 16, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 17, 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
Ann Hubbard, ESS, DHHR

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

-----,

Claimant,

v.

Action Number No.: 09-BOR-529

**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 April 16, 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 March 17, 2009 on a timely appeal filed December 26, 2008.

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
Ann Hubbard, ESS, 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 Transmittal sheet sent to MRT on 11/8/08 (Pages 1-2)
- D-2 Social Summary completed on 9/15/08, Sent to MRT on 11/8/08 (Pages 3-5)
- D-3 Physician's Summary (Pages 6 & 7) sent to MRT on 11/8/08
- D-4 Medical Review Team Decision (Pages 8 & 9)
- D-5 Denial letter dated 12/17/08 (Pages 10 & 11)
- D-6 West Virginia Income Maintenance Manual, Chapter 12

VII. FINDINGS OF FACT:

- 1) The Claimant completed an application for SSI-Related Medicaid on September 15, 2008. The information included in Exhibit D-1 (Transmittal sheet), Exhibit D-2 (Social Summary) and Exhibit D-3 (Physician's Summary) was forwarded to the Medical Review Team, hereinafter MRT, on November 8, 2008 for a disability determination.
- 2) On or about December 17, 2008, the Claimant was notified by the Department (Exhibit D-4 and D-5) that her application was denied. These notices state, in pertinent part:

Your application for Medicaid based on a disability has been denied effective 12-17-08.

Here is why: The Medical Review Team has denied your application with the following remarks: "DFA-RT-8A dated 8/13/08, indicates a good prognosis and no disability. The above does not qualify for MAO-D for one year."

- 3) The Claimant is a 61-year-old female with a history of back injuries that required surgery on two occasions. The Claimant testified that she retired from the Veteran's Administration Hospital system after 24-years of clerical service. She stated that she did not want to retire but her physical problems, specifically back pain and headaches, limited her ability to work. Her most recent back surgery occurred in February 2005 and required rods and screws be placed in her back. She indicated that she has tried to work after retiring from the Veteran's Administration but was told that she was physically unable to keep up with employment requirements. She stated that she continues to have back pain and that she needs Medicaid to assist with the payment of medication and to supplement her insurance for medical costs.

- 4) The Department's representative testified that the DFA-RT-8A (Physician's Summary, Exhibit D-3) was completed by the Claimant's primary care physician. This document indicates that the Claimant was last seen on August 13, 2008 (approximately one month before applying for SSI-Related Medicaid). The Claimant's diagnoses include: Thyroid nodule, HTN, GERD, Osteoporosis and Chronic Back Pain. The Claimant's physician noted that her prognosis is "good" and the length of time her incapacity/disability is expected to last is "0." It should also be noted that the Claimant's physician failed to document any employment limitations.
- 5) 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.
- 6) 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)
- 7) 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)
- 8) 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 very compelling, however, there is insufficient medical evidence to corroborate the Claimant's reported medical condition(s). The Claimant's physician completed the Physician's Summary but failed to note any diagnoses that qualify as a severe impairment and further indicated that the Claimant's is not disabled/ incapacitated when he documented that her disability/incapacity was expected to last "0" (zero) time. 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 16th Day of April 2009.

**Thomas E. Arnett
State Hearing Officer**