



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

May 14, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 7, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your SSI-Related Medicaid due to a disability determination made by the state Medical Review Team.

In arriving at a decision, the State Hearings 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: The definition of disability for Medicaid purposes is the same as the definitions used by the Social Security Administration (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 (West Virginia Income Maintenance Manual ' 12.2 A).

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

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your SSI-Related Medicaid.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Dorothy Ellison-Hunter, Family Support Supervisor

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

-----,

Claimant,

v.

Action Number: 09-BOR-784

**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 May 7, 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 May 7, 2009 on a timely appeal, filed February 20, 2009.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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

Dorothy Ellison-Hunter, Family Support Supervisor

All participants appeared by video conference.

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 or not the Department's decision to terminate Claimant's SSI-Related Medicaid is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Policy Manual § 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 Hearing/Grievance Record Information (Form IG-BR-29)
- D-2 Notification Letter dated November 21, 2008
- D-3 WV Income Maintenance Manual § 12.2
- D-4 Disability/Incapacity Evaluations
- D-5 Medical Review Team Packet
- D-6 Department's Summary

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant had been receiving SSI-Related Medicaid based on a disability determination made by the state Medical Review Team (MRT). Claimant was re-evaluated for continuing eligibility in August 2008. MRT issued notice of their re-evaluation on November 20, 2008 which read in part (D-4):

Client is not disabled – SSI-Related Medicaid 18/Over

DFA-RT-5 of 10/7/08 states duration of inability to work full time – “six months”. The above does not qualify for MAO-D [Medicaid based on disability].

A request for reconsideration was submitted to MRT, however, their decision that Claimant was no longer considered disabled remained unchanged.

- 2) Claimant testified that has a herniated disk in his back that causes pain down the entire left side of his body. He originally injured his back in a car accident in 1993. He managed the pain for years until he fell in 2006 which exacerbated the original injury. He is unable to lift anything. He can bend over but not like he used to. Walking and stretching help with the pain.

Claimant last worked in 2007 as a truck driver. He feels like he could start driving again as long as he did not lift any cargo. He applied for Social Security Disability but was advised by his attorney that he would not be considered disabled by the Social Security Administration. He is now working with the Division of Rehabilitative Services to be retrained and is looking for work.

Claimant also has high blood pressure that is controlled with medication.

- 3) Claimant had a general physical completed on October 7, 2008. The DFA-RT-5 reports the findings of that exam (D-5):

Diagnosis: Major: Hypertension, lumbar spine and nerve compression, radiculopathy

Is applicant able to work full time at customary occupation: No, patient has worked as a truck driver for 15 years. Unable to sit/drive for extended periods

Is applicant able to perform other full time work: Yes, may be retrained

Duration of inability to work full time: Six months

- 4) West Virginia Income Maintenance Manual § 12.2 A states:

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.

- 5) 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 § 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)

- 6) 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)

- 7) 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) Claimant does not have an impairment that is expected to last at least 12 months as indicated on Forms DFA-RT-5 dated October 7, 2008. Claimant was listed as being able to perform full time work.
- 3) Medical documentation submitted fails to establish a severe impairment as set forth in federal regulations. Claimant no longer meets the requirements to continue receiving SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate Claimant's SSI-Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of May, 2009.

Kristi Logan
State Hearing Officer