



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

March 31, 2008

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 25, 2008. Your hearing request was based on the Department of Health and Human Resources' action to terminate your SSI-Related Medicaid.

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 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 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 information which was submitted at your hearing revealed that medical documentation 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 action 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
Barry Jenkins, Economic Service Supervisor

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

_____,
Claimant,

v.

Action Number: 08-BOR-2717

**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 March 25, 2008 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 25, 2008 on a timely appeal, filed December 13, 2007.

It should be noted here that the claimant's benefits not 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
_____, Claimant's mother
Barry Jenkins, Economic Service Supervisor, DHHR

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 the Department's action to terminate Claimant's SSI-Related Medicaid was 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 Appointment Letter for March 25, 2008
- D-2 Hearing Request received December 13, 2007
- D-3 Form IG-BR-29
- D-4 Notification Letter dated December 20, 2007
- D-5 West Virginia Income Maintenance Manual § 12.2, 12.10, 16.9
- D-6 Medical Review Team Packet
- D-7 Department's Case Summary
- D-8 Medical Review Team's Decision on Reconsideration dated March 25, 2008

Claimants' Exhibits:

- C-1 None

VII. FINDINGS OF FACT:

- 1) Claimant had a Medical Review Team (MRT) review on August 23, 2007. Their decision was received by the local office on November 1, 2007 which read (D-6):

According to DFA-RT-8a, dated July 9, 2007, patient's prognosis is "good" and there are no employment limitations.

- 2) A Notification Letter dated December 20, 2007 was issued to Claimant which read in part (D-4):

Your SSI Related Medicaid for the Aged, Blind and Disabled will stop.
Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage.

- 3) Claimant requested a Fair Hearing. Additional medical information was submitted to MRT for a reconsideration on March 5, 2008. MRT's decision on the reconsideration was received March 25, 2008 which read in part (D-8):

DF-RT-8a of December 5, 2007 states employment limitations – "None". The above does not qualify for MAO-D (SSI-Related Medicaid).

- 4) Claimant testified that he has double vision in his left eye. He stated this eye “freezes” for weeks at a time and he cannot move it from side to side. Claimant stated this condition started in 2006 after suffering a paralytic stroke. He claims having two more of these strokes since then which has worsened his ability to see clearly.

Claimant states he also suffers from Irritable Bowel Syndrome, Diverticulosis, Proctitis, and Barrett’s Esophagus. Claimant currently takes Prevacid, Sulfasalazine and Sulceate for these conditions.

Claimant stated his stomach/bowel conditions are “manageable” as he has learned to live with them. However, he stated his vision problems limit him as he cannot see clearly. Claimant stated he cannot drive due to the double vision.

- 5) Claimant testified that he graduated from high school. His prior work experience was asphalt paving, house painting, mowing lawns and carpentry work. He has not worked in over 2 years.
- 6) Medical records dated July 30, 2007 from Dr. [REDACTED] were submitted to MRT regarding Claimant’s stomach/bowel conditions. Dr. [REDACTED] findings from the exam on July 30, 2007 as reported on form DFA-RT-8a were (D-6):

Diagnosis: Chronic abdominal pain, irritable bowel syndrome, Barrett’s esophagus, GERD, anal fissure, colon polyp
Prognosis: Good with appropriate medical care
Length of Disability: N/A
Employment Limitations: N/A

- 7) Medical records from Dr. [REDACTED] dated December 13, 2006 were submitted regarding Claimant’s eye condition. Dr. [REDACTED] findings from an eye exam from December 13, 2006 as reported on form DFA-RT-8a were (D-6):

Diagnosis: Left 6th nerve palsy (microvascular)
Prognosis: Good
Length of Disability: Unknown
Employment Limitation: None

- 8) Medical records from Dr. [REDACTED] dated July 9, 2007 showed his findings on Claimant’s eye condition as reported on form DFA-RT-8a were (D-6):

Diagnosis: 370.8 keratitis sicca
Prognosis: Good
Length of Disability: None
Employment Limitation: None

- 9) Medical records dated December 5, 2007 from Dr. [REDACTED] were submitted to MRT after the first denial to be used for the reconsideration. Form DFA-RT-8a reported (D-6):

Diagnosis: Microvascular 6th nerve palsy

Prognosis: Unknown
Length of Disability: Unknown
Employment Limitation: None

- 10) 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.

- 11) 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)

- 12) 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)

- 13) 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 DF-RT-8a as completed by Dr. [REDACTED] and Dr. [REDACTED]. Claimant does not have any employment limitations as indicated on Forms DF-RT-8a as completed by Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED].
- 3) Medical documentation submitted fails to establish a severe impairment as set forth in federal regulations. Medical reports from both Dr. [REDACTED] and Dr. [REDACTED] indicate that Claimant's vision is correctable with glasses. Claimant does not meet the criteria as a disabled individual.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's action 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 31st Day of March, 2008.

Kristi Logan
State Hearing Officer