



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street West
Charleston, WV 25313

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 14, 2005

Mrs. _____

Dear Mrs. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 12, 2005. Your hearing request was based on the Department of Health and Human Resources' action to deny your SSI-Related Medicaid application.

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:

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. (WV Income Maintenance Manual Section 12.2(A) (1) Definition of Disability).

The information submitted at your hearing revealed: You do not meet the State's definition of disability.

It is the decision of the State Hearings Officer to UPHOLD the ACTION of the Department to deny the SSI-Related Medicaid application.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Marsha Stowers, Supervisor

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

_____,

Claimant,

v.

Action Number: 05-BOR-6863

**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 14, 2005 for Mrs. _____. 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 originally scheduled for September 23, 2005 on a timely appeal filed September 2, 2005. The Claimant wanted to submit additional medical documentation to the Medical Review Team (hereinafter MRT). The hearing convened on November 17, 2005 and the Claimant stated she had an attorney working on her behalf. The State Hearing Officer required the Claimant to submit a letter from the attorney regarding representation before reconvening the hearing. A letter was received from the attorney denying representation in this particular matter. The hearing finally convened on December 9, 2005.

It should be noted here that the Claimant was not receiving benefits at the time of the fair hearing. A pre-hearing conference was not held between the parties and, the Claimant did not have legal representation.

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

Marsha Stowers, Income Maintenance Supervisor – Boone DHHR Office

Regina Mullins, Economic Service Worker - Boone DHHR Office

Presiding at the Hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Claimant meets the eligibility requirement of categorical relatedness for SSI-Related Medicaid by qualifying as a disabled person as defined by the Department.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2 (A) (1) Definition of Disability and; 20 CFR §§ 416.905 and 416.920

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

DHR-1 1st Denial Letter dated 08/17/05
DHR-2 2nd Denial Letter dated 10/12/05
DHR-3 WVIMM Chapter 4.1
DHR-4 WVIMM Chapter 16.1
DHR-5 WVIMM Chapter 16.4
DHR-6 WVIMM Chapter 16.9
DHR-7 WVIMM Chapter 12.2 A (1)
DHR-8 Letter from Client's Attorney dated 11/17/05
DHR-9 Social Summary Outline dated 05/20/05
DHR-10 General Physical dated 05/26/05
DHR-11 MRT Transmittal Memorandum dated 05/27/05
DHR-12 MRT request for Psychological Report dated 05/31/05
DHR-13 Additional Information Request dated 06/30/05
DHR-14 Appointment Letter dated 07/06/05 for Psychological Evaluation
DHR-15 Psychological Evaluation dated 07/14/05
DHR-16 MRT Transmittal Memorandum dated 07/19/05
DHR-17 MRT Denial of Mental and Physical Disabilities dated 08/11/05 & 06/27/05 respectively
DHR-18 MRT Transmittal Memorandum dated 09/21/05
DHR-19 MRT Denial of Physical Disability dated 10/03/05
DHR-20 MRT Denial of Mental Disability dated 10/06/05
DHR-21 Hearing Summary

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) The Claimant applied for SSI-Related Medicaid on May 20, 2005. A Social Summary Outline (Exhibit 9) was completed by Ms. Regina Mullins and approved by the Supervisor on May 27, 2005. The Claimant applied for Medicaid based on complaints of Lower back pain; Pain and numbness in her side legs and pelvis; Nerves are extremely bad most of the time; Hysterical crying; Becomes upset very easily without reason and; Cannot tolerate being around large groups of people.

2) The Claimant was referred for a General Physical (Exhibit 10). The report was completed by Waylon Kincaid, Physician Assistant on May 26, 2005. The Major Diagnosis was Pain Right Hip with a Minor Diagnosis of Social Anxiety and Depression. Mr. Kincaid's report stated that the Claimant could not work full time at customary occupation or like work because, "Patient does not want to be out in public." The report did not indicate any significant abnormalities other than Edentulous (having lost natural teeth).

3) The application along with Exhibits 9 & 10 was submitted to MRT on May 27, 2005 (Exhibit 11).

4) MRT determined on June 27, 2005 that, "No physically disabling conditions listed noted. The above does not qualify for MAO-D." (Exhibit 17).

4) The MRT requested a Psychological Evaluation on July 6, 2005 (Exhibits 12 & 13).

5) An appointment for a Psychological Evaluation was scheduled with Richard S. Morgan, M.A., Supervised Psychologist for July 14, 2005 (Exhibit 14).

6) The Psychological Evaluation was completed and faxed to the Department on July 18, 2005 (Exhibit 15). It should be noted that the Evaluation was not dated on the signature page of the faxed copy or, the Department's Exhibit.

An Intellectual Assessment called the Wechsler Adult Intelligence Scale-Third Edition (WAIS-III) was administered to the Claimant. The Psychologist stated under the heading of Overall Validity that, "Overall, results from the WAIS-III are considered invalid due to mood and motivation."

The Observed Findings state, "Mrs. _____ exhibits a depressed mood consistent effect. Thought processes were logical and coherent. Immediate memory was within normal limits. Recent memory was intact. Attention/concentration was average."

The Recommendations state, "Mrs. _____ appears she would benefit from the use of a medical card to help her obtain psychological treatment and medications for her symptoms of depression."

7) The Psychological Evaluation was forwarded to MRT on July 19, 2005 (Exhibit 16).

- 8)** The MRT made a determination of the Claimant's mental status on August 11, 2005 (Exhibit 17). The MRT stated, "Deny. Client is diagnosed Major Depressive Disorder. She exhibits moderate functional limits which would not prevent work activity."
- 9)** The Claimant requested a fair hearing on August 30, 2005.
- 10)** A fair hearing was scheduled for September 23, 2005 at the Boone DHHR District Office in Danville, WV. The Claimant called the local office and requested to submit additional medical documentation in the form of X-ray reports (Exhibit 18). The scheduled hearing was cancelled.
- 11)** The additional information was forwarded to the MRT on September 21, 2005. The MRT determined on October 3, 2005 that the Claimant was not physically disabled (Exhibit 19). The MRT stated, "X-rays show minimal changes consistent with age. Still revealed a negative exam. No physical disabilities noted. The above does not qualify for MAO-D."
- 12)** The MRT again determined on October 6, 2005 that the Claimant was not mentally disabled (Exhibit 20). The MRT stated, "Deny. There is no new medial evidence. Client is diagnosed Major Depression and exhibits moderate functional limits as a result of mental impairment. This would not prevent work activity."
- 13)** The fair hearing was rescheduled and convened on November 17, 2005. The Claimant stated during the Introduction she had an attorney working on her behalf. The State Hearing Officer required the Claimant to submit a letter from the attorney regarding representation, before reconvening the hearing. A letter was received from the attorney denying representation in this particular matter (Exhibit 8). The attorney, Rose Cyrus, Esq. is only representing Mrs. _____ in her claim for Social Security benefits. The hearing finally convened on December 9, 2005.
- 14)** At the hearing, the Department presented Exhibits 1 – 15 in support of the MRT decision. Ms. Marsha Stowers reviewed the Exhibits with those in attendance. Ms. Regina Mullins confirmed that she processed the application and additional documentation sent to the MRT.
- 15)** The Claimant did not provide any Exhibits to support her claim of a disability. The Claimant testified that her inability to work was due to her depression and, dealing with the general public. Her last employment was in February 2005 as a cashier/stock clerk with Big Lot's. She quit due to health conditions. The Claimant attended the ninth grade but, did not complete the year. She does not have any specialized training or skills. This was previously covered under the Department's Exhibits.
- 16)** The State's definition of disability for Medical Assistance Only is found in WV Income Maintenance Manual Section 12.2 (A) (1) and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in 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.

17) The State's definition of disability for Medical Assistance Only is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR § 416.905.

18) The Social Security Administration's definition in determining eligibility for SSI based on disability is found at 20 CFR § 416.905.

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in Sec. Sec. 416.920(e) and 416.945. (See Sec. 416.920(g) (2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

19) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI, these are set forth in 20 CFR § 416.920:

- (1) Is the person performing substantial gainful activity as defined in 20 CFR § 416.910? If so, the person is not disabled;
- (2) If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled;
- (3) If the person has a severe impairment, is the impairment a listed impairment (under 20 CFR Part 404, Subpart P, App. 1) or its medical equivalent? If so, the person is disabled.
- (4) If not, what is the person's residual functional capacity, and can that person still perform his or her former work? If so, the person is not disabled.
- (5) If not, can the person do any other work, based upon the combined vocational factors of residual functional capacity, age, education, and past work experience? If not, the person is disabled.

VIII. CONCLUSIONS OF LAW:

1) The State's definition of disability for Medical Assistance Only is found in WV Income Maintenance Manual Section 12.2 (A) (1) and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in 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.

2) The five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI, as set forth in 20 CFR § 416.920 reveal:

- (1) The Claimant is not performing substantial gainful employment;
- (2) The Claimant does not have a severe impairment that is expected to last for a continuous period of at least 12 months or result in death with a Major Diagnosis of Pain in the Right Hip and, a Minor Diagnosis of Social Anxiety and Depression;
- (3) The Minor Medical Diagnosis of Social Anxiety and Depression does not meet the criteria listed in Section 12.00 "Mental Disorders" of 20 CFR Part 404, Sub Part P, Appendix 1. The Major Medical Diagnosis of Pain in Right Hip is not severe enough to be considered a severe impairment which is expected to last for a period of at least 12 months or, result in death.
- (4) The remaining two sequence of steps are not addressed as there are no findings of a severe impairment which meets the criteria of 20 CFR Part 404, Sub Part P, Appendix 1.

3) The Claimant does not meet the definition of disability for the SSI-Related Medicaid Program.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Department's action to deny the SSI-Related Medicaid Application.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of December, 2005.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**