



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
150 Maplewood Avenue  
Lewisburg, WV 24901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

March 31, 2006

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under 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. Some of these regulations state as follows: 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 can be expected to result in death or which can be expected to last for a continuous period of not less than twelve months. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at your hearing revealed that in the opinion of the State Hearing Officer, you continue to meet the above stated definition.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate benefits under the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Susan Godby, DHHR

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6556**

**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 January 5, 2006 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 January 5, 2006 on a timely appeal, filed August 22, 2005. It should be noted that this hearing was originally scheduled for November 22, 2005. It was rescheduled at the claimant's request to January 5, 2006.

It should be noted here that the claimant's benefits have been continued pending the 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  
Susan Godby, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, 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)  
20 CFR 416.905 and 416.920  
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2  
20 CFR 404.1594 (b)(1)  
20 CFR 404.1508, 404.1509, & 404.1520 Code of Federal Regulations

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Hearing Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 08/11/05
- D-3 Copy of MRT Decision
- D-4 Copy of MRT Packet
- D-5 Copy of West Virginia Income Maintenance Manual Section 12.2
- D-6 Copy of Department's Summary

**Claimants' Exhibits:**

- C-1 List of Medications

**VII. FINDINGS OF FACT:**

- 1) The claimant is a recipient of Medicaid based on being found disabled by the Medical Review Team. She is 30 years of age and completed the seventh grade. She does not have her GED. The only work reported was a job at the [REDACTED] in 2005 cleaning. She could not complete the job because of being in the heat and the smell of bleach.

- 2) There was a required medical reevaluation in August, 2005. The information was submitted to MRT on 08/03/05. The decision was returned stating that the claimant was no longer disabled. The case was sent back for reconsideration and the finding was still not disabled. (D-3)
- 3) The claimant was sent a notice dated 08/11/05 informing her that her SSI-Related Medicaid for the Aged, Blind and Disabled would stop effective September 2005. Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage. (D-2) The claimant requested a hearing 08/22/05.
- 4) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 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.

- 5) The State's definition of disability for Medicaid 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.
- 6) 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.
- 7) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.

- 8) The claimant is not employed.

- 9) The second sequential step is:

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.

- 10) The claimant's most recent favorable disability decision was 02/18/04. At that time there was a diagnosis of COPD, PCOS, and obesity. The MRT determined that the claimant had a medically determined impairment or combination of impairments which significantly limited the claimant's ability to perform basic work activity.
- 11) The general physical completed 06/23/05 reads in part that the applicant cannot work full time at customary occupation or like work nor able to perform other full time work. Diagnosis: IODM, COPD, and ?. Duration of inability to work full time: Indefinite. Should avoid lifting, bending, twisting.

- 12) Psychological evaluation completed 05/18/05 shows the results of the Wechsler Adult Intelligence Scale as Verbal IQ 75, Performance IQ 76 and Full Scale IQ 74. This would indicate functioning in the Borderline range of ability. Scores would indicate poor short-time memory skills. The client was able to make abstractions and generalizations. Math skills are limited but are adequate for managing her financial affairs. Attention span and ability to concentrate were adequate for testing. Long-term memory skills appear to be consistent with ability.

The client reports no hallucinations, delusions, or suicidal thoughts. She stated that she is depressed some but it comes and goes. The client reported she does become angry easily. She becomes nervous when she is driving. She doesn't like to be around crowds. She reports no panic attacks. She reports worrying excessively occasionally. Her appetite varies. Although she is not paranoid in general, she reports some paranoid feelings toward a particular person. She denies homicidal thoughts but reported about an incident a few years ago that she would have had to have revenge on her grandmother if things had gone differently.

The client was found to be functioning in the Borderline range of ability. Math skills are consistent with ability. She does show a delay in reading recognition. She reports some feelings of depression and nervousness. She reports some anger control problems and feelings of paranoia.

Axis I: Depressive Disorder NOS  
Anxiety Disorder NOS  
Alcohol Dependence in Sustained Partial Remission  
Axis II: Borderline Personality Disorder  
Borderline Intellectual Functioning

- 13) Notes from Greenbrier Physician's Inc. dated 02/11/05 read in part that the patient is in NAD. ENT is NSA. Lungs – Breath sounds are distant. She has end expiratory wheezing. Heart has a regular rate and rhythm. Abdomen is obese, but benign. I am unable to palpate any tenderness in her liver. It does not seem to be enlarged. There is no ascites. No dilated veins. No scleral icterus or jaundice. No pedal edema. Her ultrasound showed a fatty liver vs. non-specific hepatocellular disease. Notes of 02/21/05 read in part that the claimant continues to smoke and is a diabetic.....A: Diabetes mellitus ? compliance, viral illness resolved, suspect early URI, fatty liver – etiology uncertain.
- 14) Notes from [REDACTED] Physician's Inc. dated 03/21/05 read in part the patient is in NAD. We had conversation for twenty minutes regarding the care of diabetes. The CT of her abdomen showed fatty infiltration without evidence of focal lesion. There is no splenomegaly. No abnormality of her adrenal glands, kidneys, or gallbladder. Her pancreas and lymph nodes appear to be normal. A: Diabetes mellitus – not controlled, fatty liver – etiology uncertain, hyperlipidemia – non-compliance, GER, back pain, myalgias, COPD, and asthma.
- 15) Physician's Summary from Dr. ? dated 03/22/04 reads diagnosis – abscessed tooth, COPD. Prognosis – good. No incapacity was identified. Employment limitation: None were apparent.

- 16) General physical completed 09/11/03 by Dr. [REDACTED] reads applicant is unable to do customary occupation or like work – she has worked as a janitor but the chemicals irritate her lungs. Applicant is able to perform other full time work. Pulmonary restriction does not limit her ability to work. Treatment: Stop smoking, use medications as directed. Notes at the time of the exam read in part that cardiovascular exam, heart had regular rate and rhythm without murmurs. Blood pressure is 140/90, pulse 96 and regular. Lungs were basically clear to auscultation in all lung fields. Temperature is 97.6. Weight is 233 lb. Height is 5’8”. COPD, Polycystic ovarian syndrome, obesity.
- 17) Notes from Dr. [REDACTED] dated 06/19/03 read in general, she is an alert 28-year-old white female who is in minimal distress due to shortness of breath.
- 18) Chest AP/PA & 1 lateral completed 04/15/2004. Impression: No acute change.
- 19) Physician’s Summary dated 07/12/04 reads in part diagnosis: Dysthymic Mood D/O. Prognosis: Chronic. Length of time disabled: 6 months. Employment limitations: ? jobs or working in public will cause ?.
- 20) Psychiatric report dated 10/23/03 by Dr. [REDACTED] reads in part her mood is dysthymic. Her thoughts are logical and linear. Her insight and judgment appear intact, though she appears to have some lower intellectual functioning. She denies suicidal thoughts.
- Diagnostic Impression:  
AXIS I: Dysthymic Disorder
- 21) Psychiatric update from Dr. [REDACTED] dated 07/12/04 reads in part:
- Diagnostic Impression:  
AXIS I: Dysthymic Disorder (300.4)  
Mood Disorder NOS
- 22) Medication check from Dr. [REDACTED] dated 06/18/04 reads in part claimant has not been on any medication. She has a constricted affect. Her mood is dysthymic but hopeful and is motivated for treatment. She is goal oriented. There is no evidence of psychotic thinking. She is alert and oriented x 4. Her insight and judgment appear intact. There is no evidence of suicidal ideation. Medications: No psychotropic medications. She is on an unknown diabetic medication. Patient will initiate Zoloft 50mg PO QD.
- 23) Medication check from Dr. [REDACTED] dated 01/05/04 reads in part the claimant is doing well. She is interactive and conversant. She displays full affect. Her mood is mildly dysthymic. Her thoughts are logical and goal oriented. She is alert and oriented x 4. Her insight and judgment are intact. There is no evidence of suicidal ideation. Medications: None. Patient will restart Zoloft 50mg QD and Seroquel 100mg QHS.
- 24) Physicians Summary dated 08/03/04 from [REDACTED] PAC reads in part Diagnosis: Diabetes mellitus, hyperlipidemia, history of COPD, depression, recurrent abscesses.

Prognosis: Good. Employment Limitation: Unable to make a determination at the present time.

- 25) Psychological evaluation dated 10/28/03 by Judith Lucas reads in part that on the Wechsler Adult Intelligence Scale-Third Edition the client obtained the following scores: Verbal IQ – 74, Performance IQ – 75, Full Scale IQ – 72. This would indicate functioning in the Borderline range of ability according to Wechsler’s classifications. The client was found to have Borderline Intellectual Functioning. She reports depression, anxiety, and some symptoms of Posttraumatic Stress Disorder. Diagnoses: Axis I: Dysthymic Disorder, Anxiety Disorder NOS. Axis II: Borderline Intellectual Functioning.
- 26) The rest of five-step sequence of questions (See #7 and #9 above) to be addressed when evaluating claims of disability as set forth in 20 CFR 404.1520 are:
- (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)
- 27) 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)
- 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 impairment(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)
- 28) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that medical improvement is any decrease in the medical severity of your impairment which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).

**VIII. CONCLUSIONS OF LAW:**

- 1) Regulations are clear that in order to qualify as disabled, an individual must suffer a severe impairment and this impairment must have lasted or e expected to last for a continuous period of 12 months. A severe impairment is defined as an impairment which significantly limits an individual's physical or mental ability to do basic work activities. An individual who is 18 years of age or over is considered disabled if that person is unable to engage in any substantial gainful activity as a result of such impairment. A determination that there has been a decrease in medical severity must be based on changes or improvement in the symptoms, signs and/or laboratory findings associated with the impairment.
- 2) The medical documentation is consistent with the claimant's most recent favorable favorable finding. The claimant continues to report the same medical condition, and more importantly, the Department's inability to cite improvement in the symptoms, signs and or laboratory findings, fails to support an unfavorable finding on behalf of the claimant.

**IX. DECISION:**

It is the finding of the State Hearing Officer that the claimant continues to meet the definition of disability. The Department is reversed in the decision to terminate the claimant's benefits under the SSI-Related Medicaid Program. The action described in the notification letter dated August 11, 2005 will not be taken. The case will be reviewed no later than March, 2006 with at least a general physical.

**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, 2006.**

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**Margaret M. Mann  
State Hearing Officer**