



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

January 30, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 22, 2005. Your hearing request was based on the Department of Health and Human Resources' determination that you are no longer disabled for purposes of the SSI-Related Medicaid Program.

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. 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 can be expected to result in death or 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 you continue to meet the criteria necessary to establish a disability for purposes of the Medicaid Program.

It is the decision of the State Hearings Officer to **reverse** the Department's proposal to terminate your SSI-Related Medicaid based on medical eligibility. The Department may complete a medical reevaluation at any time but must be completed no later than January 2007.

Sincerely,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Peggy Wikle, ESW, DHHR
_____, Paralegal, Legal Aid of WV

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

_____,

Claimant,

v.

Action Number: 05-BOR-6744

**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 30, 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 December 22, 2005 on a timely appeal, filed October 3, 2005.

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
_____, Claimant's representative
Peggy Wikle, ESW, 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 the Claimant continues to meet the medical eligibility requirement necessary to qualify as disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 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:

- DHHR-A Disability /Incapacity Evaluation reviewed by MRT March 3, 2004 (most recent favorable decision)
- DHHR-B Medical documentation sent to MRT for reevaluation accompanied by ES-RT-3 dated 5/3/05 and DFA-RT-3M dated 8/4/05 as well as written Notice of Denial from DHHR dated 8/10/05.
- DHHR-C Additional information submitted on 8/31/05 accompanied with DFA-RT 3M dated 9/26/05 and ES-RT-3 dated 9/13/05 and a Notice of Denial from DHHR dated 9/29/05.
- DHHR-D** ES-RT-3 dated 1/9/06, DFA-RT-3M dated 1/6/06 and Notice of Denial dated 1/11/06.

Claimant's Exhibits:

- Claimant's -1 Correspondence from [REDACTED] M.D. dated May 27, 2004.
- Claimant's -2 Pre-Hearing Memorandum dated September 28, 2004 - Submitted to SSA by [REDACTED]'s Representation Service for a hearing scheduled on December 8, 2005.
- Claimant's -3 Claimant's Medications correspondence from [REDACTED] M.D., dated August 24, 2005.
- Claimant's -4 Physician's notes from [REDACTED] Health Care.

** Indicates that information was received subsequent to the Hearing.

VII. FINDINGS OF FACT:

- 1) The Claimant is an active recipient of SSI-Related Medicaid resulting from a favorable disability determination (DHHR-A) from the Medical Review Team, hereinafter MRT, on March 3, 2004. The ES-RT-3, Disability / Incapacity Evaluation form, completed by the MRT notes under section IV.C., that the client's impairment(s) meet or equal the listing of impairments. Section VI.A., indicates that the case must be reevaluated in March 2005.

- 2) In March 2005, the Department received requested medical records from [REDACTED] Dr. [REDACTED] M.D (included in DHHR-B) to have the Claimant medically reevaluated for Medicaid. The Physician's Summary (DFA-RT-8A) indicates that the patient was last seen on 3/11/05 and that her diagnosis is "Chronic Back Pain." The sections of the Physician's Summary that require prognosis, length of disability, and employment limitations are not completed and the doctor did not sign this form. This document is accompanied by a copy of notes made in the Claimant's medical chart on March 11, 2005. A Social Summary and Physician's Summary was forwarded to the MRT on or about March 24, 2005.
- 3) On May 12, 2005, the MRT requested additional medical information (see DFA-RT-14 dated 5/12/05 in DHHR-B). The MRT requested a psychological report "w/IQ 90801, 96100." It is unclear if the Department's evidence was out of order, but an ES-RT-3 dated 5/3/05 was also found in DHHR-B indicating that the client is not disabled. Section IV.E. states – "No physically disabling conditions noted. The above does not qualify for MAO-D."
- 4) A psychological evaluation was completed on the Claimant on June 15, 2005. This evaluation, and the Physician's Summary (3/11/05), was submitted to the MRT on July 7, 2005. (DHHR-B)
- 5) The MRT reviewed the psychological evaluation and returned a DFA-RT-3M with a review date of August 4, 2005 to the Department. The MRT's findings on the Mental Disability / Incapacity Evaluation indicate that the client is not mentally disabled. Section IV.E states – "Deny as ct is diagnosed Depressive Disorder NOS. Ct exhibits mild sx's which do not significantly limit adaptive function." (DHHR-B)
- 6) On August 10, 2005, the Department sent the Claimant a denial notice (ES-RT-3 Cover Letter) that includes the MRT's statement of findings from the 5/3/05 ES-RT-3 and the 8/4/05 DFA-RT-3M. (DHHR-B)
- 7) During a pre-hearing conference with her Worker, the Claimant stated that Dr. [REDACTED] had done some additional testing and that she had new evidence of her inability to work. The new medical records were requested from [REDACTED] on or about August 23, 2005. (see exhibit DHHR-C).
- 8) Dr. [REDACTED] returned a Physician's Summary (DFA-RT-8a) to the Department that was signed but incomplete and undated. Accompanying the DFA-RT-8a are copies of the Claimant's medical records from visits to [REDACTED] on 7/11/05, 8/11/05 and 8/25/05. This information was submitted to the MRT on August 31, 2005. (DHHR-C)
- 9) The MRT reviewed the additional medical information and returned an ES-RT-3 (Disability / Incapacity Evaluation) signed on 9/13/05. Section IV.E. states – No physical conditions noted that would meet a disability rating for MAO-D.

A DFA-RT-3M (Mental Disability / Incapacity Evaluation) was returned with a signature date of 9/26/05. Section IV.E. includes the following statement: "Deny – There is no additional information re: mental condition. Psychological diagnosed depressive

Disorder NOS. Ct exhibits mild functional limits which would not significantly limit ability to work.”

An ES-RT-3 Cover Letter was sent to the Claimant on September 29, 2005 advising the Claimant of the MRT’s findings. (DHHR-C)

- 10) The Claimant’s representative stated that the Department must show that there has been improvement in the Claimant’s medical condition. Ms. _____ indicated that neither the medical documentation nor the findings cited by the MRT show medical improvement in her client’s condition. She indicated that the previous approvals have been based on her back impairment and this condition has not improved. Exhibits C-1 through C-4 was submitted to support that there has not been a change in her client’s medical condition. Because some of the information included in these exhibits were not previously submitted to MRT, the medical documents received at the hearing were resubmitted to MRT subsequent to the hearing.
- 11) Exhibit DHHR-D is the ES-RT-3 (Disability / Incapacity Evaluation form) signed by MRT on 1/9/06 and was completed after the hearing. This document states (Section IV.E.) – “No physical conditions noted that would qualify client for MAO-D of 1 year. Per Dr. Clark (ortho) in a letter dated 5/27/04 states that client is 9% impaired and per his opinion she had reached maximum medical improvement.”

Also included in DHHR-D is a DFA-RT-3M (Mental Disability / Incapacity Evaluation), signed by MRT on 1/6/06 states (Section IV.E.) – “Additional records do not provide information regarding significant mental impairment. Ct is diagnosed depressive disorder NOS. Functional limits as a result of the depressive disorder are non severe.”

An ES-RT-3 Cover Letter was sent to the Claimant on 1/11/06 advising of MRT’s findings.

- 12) A review of exhibit DHHR-A reveals under Section IX of the Social Summary that the Claimant was applying for SSI-Related Medicaid due to - “Degerative [sic] Disc Disease, 2 Bulging Discs, left hip, shoulder and leg problems tail bone swells.” Medical records were submitted from [REDACTED] and an x-ray of L.S. Spine was sent following the request by MRT. The x-ray results were forwarded to MRT and on 3/3/04, the MRT reviewed the Claimant’s case. The ES-RT-3 signed by MRT on 3/3/04 indicates in section II that the Claimant was found to be disabled for SSI-Related Medicaid because her impairments (Section IV.C.) meet or equals the listing of impairments.
- 13) Exhibit DHHR-B indicates in the Social Summary Outline, Section IX that the reason for the Claimant’s application is – “Degenerative Disc Disease, Arthritis, Back, Shoulder hips and feet hurt. Feet burn if in shoes more than 15 minutes. Shoulders are aching today. Range of motion is limited. Depression also.”

- 14) 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.
- 15) 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)
- 16) 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)
- 17) 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)
- 18) 20 CFR ' 404.1594 (b)(1) Code of Federal Regulations:
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) The Claimant's most recent favorable disability determination occurred in March 2004.
- 2) The Code of Federal Regulations state that medical improvement is any decrease in the medical severity the Claimant's 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).
- 3) The Social Summary Outline and the medical information submitted for the March 2005 medical reevaluation is consistent with the Claimant's most recent favorable finding. The Claimant continues to report chronic low back pain, and more importantly, the Department's inability to cite improvement in symptoms, signs and or laboratory findings, fails to support an unfavorable finding on behalf of the Claimant.
- 4) The Department has failed to followed proper procedure in determining that you are not disabled.

IX. DECISION:

It is the ruling of the State Hearing Officer to **reverse** the Department's proposal to terminate your SSI-Related Medicaid benefits based on medical eligibility. The Department may complete a medical reevaluation at any time but must be completed no later than January 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of January 2006.

**Thomas E. Arnett
State Hearing Officer**