



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

January 11, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 21, 2005. Your hearing request was based on the Department of Health and Human Resources' action to close your Medicaid Work Incentive (M-WIN) Program case.

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 Medicaid Work Incentive Program is based on current policy and regulations. One of these regulations specifies that the M-WIN applicant/recipient must meet the disability criteria established by the Social Security Administration. [WV Income Maintenance Manual Section 23.12]

The information which was submitted at your hearing revealed that you were not evaluated by the Medical Review Team for the Medically Improved Program when being evaluated for disability under the M-WIN Program.

It is the decision of the State Hearings Officer to reverse the action of the Department to close your Medicaid Work Incentive (M-WIN) Program case.

Sincerely,

Thomas M. Smith
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Fran Bellamy, Dept. Hearing Rep.

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

_____,

Claimant,

v.

Action Number: 05-BOR-6774

**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 6, 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 October 21, 2005 on a timely appeal, filed September 20, 2005.

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

II. PROGRAM PURPOSE:

The Program entitled Medicaid Work Incentive Program is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Medicaid Work Incentive (M-WIN) coverage group was established by West Virginia Senate Bill 388 to assist individuals with disabilities in becoming independent of public assistance by enabling them to enter the workforce without losing essential medical care. The coverage group is effective May 1, 2004.

III. PARTICIPANTS:

_____, Claimant
Fran Bellamy, ESW, DHHR

Presiding at the Hearing was Thomas M. Smith, 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 agency was correct in the proposal to close the claimant's Medicaid Work Incentive (M-WIN) Program case based on a disability.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 2.4, 12.2, 23.1, 23.2, 23.4, 23.12.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Copy of packet of medical documents submitted to MRT 8-29-05 (18 pages)
- D-2 Copy of original packet of medical documents submitted to MRT 8-5-04 (8 pages).
- D-3 Copy of notification letters and hearing request (6 pages).
- D-4 Copy of regulations in Chapter 12.2 and 23.12 (2 pages).
- D-5 Copy of new medical sent to MRT for reconsideration 9-27-05 (34 pages).
- D-6 Copy of packet of new documents denied by MRT on 12-20-05 (16 pages).

Claimant's Exhibits:

None.

VII. FINDINGS OF FACT:

- 1) The claimant was an active recipient of the Medicaid Work Incentive Program (M-WIN) when a reevaluation packet was submitted to the Medical Review Team (MRT) on 8-29-05. The information included in Exhibit D-1 included a General Physical report, Physician's Summary, other associated medical documents, and a Social Summary Outline and was forwarded to the Medical Review Team on 8-29-05 to determine if the claimant met the definition of disability.
- 2) The MRT reviewed the claimant's medical documentation and determined that the claimant did not meet the definition of disability for the M-WIN Program on 9-13-05. The ES-RT-3, (D-2) Disability / Incapacity Evaluation, includes the following statement in Section III, E:

"Current medical information and physician opinion indicates that you are able to work."

3) On 9-19-05, the Department sent the claimant a Notice of Decision (Exhibit D-3) advising of the MRT's decision and the claimant requested a hearing on 9-20-05 and additional documentation was obtained and sent to the MRT for reconsideration on 9-27-05 (Exhibit #D-5) and on 9-29-05, the MRT requested a Pulmonary Report and a Psychiatric Report. The Diagnostic Evaluation was completed 10-26-05 and a

Pulmonary test was completed on 11-20-05 and the reports were resubmitted to the MRT on 12-1-05 and the MRT determined on 12-20-05 that the claimant did not meet the definition of disability for the M-WIN Program.

- 4) The claimant testified that she has been on the M-WIN Program for one (1) year and that she has the same medical conditions she had a year ago, that she suffers from asthma and is treated by Dr. [REDACTED] that she had diverticulitis and was treated by Dr. [REDACTED] that she is going through menopause and depression and is being treated by Dr. [REDACTED] and that she works as a Home Health Aid through [REDACTED] County Action Group.
- 5) The request for reevaluation submitted by the local office to the MRT on 8-19-05 requested evaluation of disability under the Medicaid Work Incentive Program (M-WIN) and did not request evaluation of disability under the Medically Improved Program (Exhibit # D-1).
- 6) The ES-RT-3 returned by the MRT on 9-13-05 marked in Section III that the client is not "Disabled-Medicaid Work Incentive-18/Over" and did not mark anything under the "Medicaid Work Incentive-Medically-Improved-18/Over" section. (Exhibit #D-1).
- 7) The ES-RT-3 returned by the MRT on 12-20-05 marked in Section III that the client is not "Disabled-Medicaid Work Incentive-18/Over" and did not mark anything under the "Medicaid Work Incentive-Medically-Improved-18/Over" section.
- 8) West Virginia Income Maintenance Manual Section 23.2 states, in part:

B. DISABILITY

The individual must be disabled as defined by the Social Security Administration. The disability may be determined by Social Security or by the State Medical Review Team (MRT). Disability, for this coverage group, is defined as a medically determinable physical or mental condition which has lasted or is expected to last a year or more or is expected to result in death. The disability definition for individuals under age 18 is found in Section 12.2,A,2.

- 9) West Virginia Income Maintenance Manual Section 23.4 states, in part:

B. REDTERMINATION OF DISABILITY

At the time of the 6-month redetermination, the Worker must insure that the disability requirement continues to be met for the new period of eligibility. The individual must be a current RSDI recipient or there must be a valid MRT decision which extends into the new eligibility period. MRT reevaluations will be completed at the time specified by MRT.....

NOTE: When the information is submitted to MRT for reevaluation of disability, an evaluation for Medically- Improved eligibility must be requested automatically at the same time. If the individual is determined no longer disabled, he is evaluated immediately as Medically- Improved.

The Department cannot determine that an individual who participates in the program is no longer disabled solely due to his employment or earned income, including self-employment.....

D. IMPROVEMENT IN MEDICAL CONDITION – MEDICALLY-IMPROVED GROUP

NOTE: Only individuals who originally received benefits under the M-WIN coverage group may receive this coverage as medically-improved. The medical determination is made by MRT.

An M-WIN recipient who experiences an improvement in his medical condition remains eligible for coverage if he:

- Continues to have a severe medically determinable impairment, as determined by MRT and permitted by federal law: and
- Is employed and earns a monthly wage not less than the federal minimum hourly wage multiplied by 40: and
- Has income and/or assets that do not exceed program limits: and
- Is at least age 16, but under age 65: and
- Meets all other program eligibility requirements.

10) WV Income Maintenance Manual Section 23.12 B states, in part:

“When the information is submitted to the MRT for reevaluation of disability, an evaluation for Medically-Improved eligibility must be requested automatically at the same time. If the individual is determined no longer disabled, eligibility as Medically-Improved is immediately evaluated.”

11) WV Income Maintenance Manual Section 2.4 states, in part:

“In no instance is Medicaid Coverage under one coverage group stopped without consideration of Medicaid eligibility under other coverage groups. This is done before the client is notified that his Medicaid eligibility will end.”

12) 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.

13) 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)
- 14) 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)
- 15) 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) WV Income Maintenance Manual Sections 23.4 and 23.12 require that when a case is submitted to the MRT for reevaluation of disability for the M-WIN Program that an automatic evaluation of eligibility for the Medically-Improved Program must be requested. The evidence submitted at the hearing revealed that the local office did not request that the MRT evaluate the claimant for disability under the Medicaid Work Incentive-Medically-Improved Program.
- 2) The MRT evaluated the claimant for disability and indicated on the ES-RT-3 completed on 9-13-05 that an evaluation for disability for the M-WIN Program was completed but did not indicate that evaluation for disability for the Medically-Improved Program was completed. There is no evidence or testimony to show that the claimant was evaluated by the MRT for the Medically-Improved Program.
- 3) WV Income Maintenance Manual Section 2.4 states that in no instance is Medicaid coverage under one coverage group stopped without consideration of Medicaid eligibility under other coverage groups and that this must occur prior to notification of closure of the Medicaid case.
- 4) The evidence and testimony show that the claimant was not evaluated under the Medically-Improved Program as required prior to being notified of closure of the M-WIN Program case.

IX. DECISION:

It is the ruling of this Hearing Officer to reverse the proposal of the Department to close the Medicaid Work Incentive (M-WIN) Program case.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 11th Day of January, 2006.

**Thomas M. Smith
State Hearing Officer**