



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

April 13, 2006

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 14, 2006. 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 re-evaluation at any time but must be completed no later than April 2007.

Sincerely,

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

cc: Chairman, Board of Review  
Linda Zeigler, ESW, DHHR  
[REDACTED] Esq.

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 05-BOR-6842**

**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 April 13, 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 March 14, 2006 on a timely appeal, filed October 5, 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 mother

\_\_\_\_\_, Claimant's father

\_\_\_\_\_ Esq., Counsel for the Claimant

Linda Zeigler, 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 be medical eligibility to qualify as a 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:**

- D-1 Correspondence from DHHR dated 9/28/05
- D-2 DFA-RT-3M Mental Disability/Incapacity Evaluation review by MRT on 9/26/05 accompanied by the MRT Transmittal (8/29/05) and Social Summary Outline dated 8/10/05.
- D-3 Psychological report request by the Department with a Psychiatrist's Summary (DFA-RT-15a) dated 8/25/05 and Psychiatric Notes and prescription log from Healthways.
- D-4 Claimant most recent favorable Disability Evaluation, approved by MRT on 10/04/04.
- D-5 Original medical packet submitted to MRT in November 2003.

**Claimant's Exhibits:**

- C-1 Correspondence dated March 13, 2006 from [REDACTED] MD, Board Certified Psychiatrist and [REDACTED] MRC, PLC., of [REDACTED]
- C-2 Handwritten note on an Rx pad from [REDACTED] M.D. dated 3/13/06

**VII. FINDINGS OF FACT:**

- 1) The Claimant is an active recipient of SSI-Related Medicaid resulting from his most recent favorable disability determination (D-4) from the Medical Review Team, hereinafter MRT, on October 4, 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 October 2005.
- 2) In accordance with the MRT's designated medical review date of October 2005, the Department's Worker gather medical documentation from the Claimant's treating physician and forwarded medical documentation included in exhibits D-2 and D-3 to the MRT for review.

- 3) On September 26, 2005, the MRT completed the Mental Disability / Incapacity Evaluation form (DFA-RT-3M). This document, exhibit D-2, includes the following pertinent findings:

Section I - reveals that there is sufficient information to complete a re-evaluation.

Section III - indicates "client is not mentally" disabled –SSI-Related Medicaid 18/Over.

Section IV (A) - shows that the client is not currently performing substantial gainful activity.

Section IV (B) – indicates "no" to the question – Does the client have a medical determinable impairment or combination of impairment which significantly limits ability to perform basic work activity.

Section IV (E) states "deny Ct is diagnosed Major Depression & GAD. Length of incapacity/disability expected is 6 mo. This does not meet 12mo disability criteria"

Section VI states that a re-evaluation of the Claimant's medical eligibility will be in October 2005 and will include medical reports from last MRT submittal, an updated social summary and a DFA-RT-15a (Psychiatrist Summary).

- 4) Medical documentation reviewed for this evaluation includes the Psychiatrist's Summary (DFA-RT-15a) completed by Dr. [REDACTED] M.D., on August 25, 2005 (D-3). This document indicates that the Claimant diagnoses are - 296.32 Major Depression – Recurrent – Mod and 300.02 Generalized Anxiety. His prognosis is listed as fair and the length of incapacity/disability is expected to last 6 months. Dr. [REDACTED] indicates that the Claimant's employment limitations are "He has poor social skills and anger problem."
- 5) Claimant's exhibit C-1 includes the following statement – "We are writing to inform you that \_\_\_\_\_ has been diagnosed with Dysthymic Disorder, a form of chronic depression (DSM 300.4). We have treated [REDACTED] at our facility since he was twelve (12) years old, and we will continue to do so."

This statement was signed by Dr. [REDACTED] M.D., Board Certified Psychiatrist and [REDACTED] MRC, PLC, Clinical Supervisor.

- 6) In Claimant's exhibit C-2, Dr. [REDACTED] includes the following statement – "[REDACTED] has been in mental health treatment here at [REDACTED] for many years. He has Dysthymic Disorder and continues to be disabled in spite of treatment. His disability may last a year or more."
- 7) The Claimant testified that his medical condition has not improved and that he continues to receive therapy for his condition. He presently takes medication daily to help manage the symptoms of his anxiety and depression, he stated that he is unable to work.

- 8) 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.
- 9) 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)
- 10) 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)
- 11) 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)
- 12) 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 October 2004 when the MRT determined that the Claimant met or equaled the listing of impairments. A re-evaluation date of October 2005 was set by the MRT and the only new medical information to be submitted at the re-evaluation was a Psychiatrist's Summary (DFA-RT-15a).
- 2) The Psychiatrist's Summary submitted for re-evaluation indicates that the Claimant continues to present a diagnosis of Major Depression and Generalized Anxiety, however, the MRT's reason for denial is based on Dr. [REDACTED]'s statement that the Claimant incapacity /disability was only going to last 6 months. The duration requirement, according to the Code of Federal Regulations, is defined as an impairment which has lasted or can be expected to last for a continuous period of not less than 12 months. Because the Claimant's disability has been ongoing for more than two years, according to MRT approvals, the duration requirement has been met.
- 3) 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). The Department failed to meet this requirement.
- 4) The evidence reveals that the Claimant continues to present a diagnosis of Major Depression and Anxiety, and that he continues to be disabled. While the duration requirement has clearly been met, the additional documentation submitted at the hearing affirms Dr. [REDACTED]'s position – The Claimant continues to be disabled and his disability may last a year or more.

### **IX. DECISION:**

It is the decision 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 re-evaluation at any time but no later than April 2007.

### **X. RIGHT OF APPEAL:**

See Attachment

### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 13th Day of April 2006.**

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**Thomas E. Arnett  
State Hearing Officer**