



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
235 Barrett Street
Grafton WV 26354
July 10, 2006

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms. ____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal of November 28, 2005 to terminate your Medicaid coverage.

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 Medicaid program (SSI-Related) is determined based on current 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 last for a continuous period of not less than twelve months. [West Virginia Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at the hearing revealed that your current condition fails to meet criteria necessary to establish disability for purposes of the Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Agency to discontinue Medicaid coverage as set forth in the November 28, 2005 notification.

Sincerely,

Ron Anglin
State Hearing Examiner
Member, State Board of Review

cc: Chairman, Board of Review
Michael Phillips, ESS

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

_____,
Claimant,

v.

Action Number- 05-BOR- 7150

**West Virginia Department of Health and Human Resources,
Respondent.**

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Examiner resulting from a fair hearing concluded on July 10, 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 originally convened on March 9, 2005 on a timely appeal filed December 15, 2005 (pre-hearing request 12/5/05).

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

SSI- Related Medicaid 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

Michael Phillips, ESS, Agency Representative

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the claimant continues to meet the medical eligibility requirement necessary to qualify as a disabled individual for purposes of the (SSI- Related) Medicaid Program.

V. APPLICABLE POLICY:

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 – MRT Package submitted 9/14/05
- D-2 - additional MRT Package submitted 11/29/05
- D-2a- Physical Exam, 11/4/05
- D-3 – Notification, 11/28/05
- D-4 – Psychological Evaluation, 4/23/06 (received by this Examiner 6/13/06)

VII. FINDINGS OF FACT:

1) The claimant requested a hearing December 15, 2005 in response to a November 28, 2005 notification of Medicaid closure. The agency's Medical Review Team had found the claimant no longer medically eligible for the program. A hearing was convened March 9, 2006.

2) During the hearing, Exhibits as noted in Section VI above were submitted. Exhibit D-4 ordered during hearing was received by hearing examiner 6/13/06. It is noted that the entire medical/social package with D-4 (psychological eval) was resubmitted to MRT 5/11/06 with a negative finding issued 6/12/06.

3) Testimony was heard from the individuals listed in Section III above. All persons giving testimony were placed under oath.

4) The agency presented the social/medical packages - Exhibits D-1 & D-2. The agency also noted that medical eligibility was to be re-evaluated 8/05. Packet submitted to MRT 9/8/05. 9/29 MRT determined no disability. 11/23 resubmitted to MRT. 11/28 closure notification sent. 12/14 MRT denial of 11/23 submittal. 12/5 pre-hearing conference request with hearing request following on 12/15/05.

5) Testimony by the claimant revealed as follows: Claimant is 48 years of age with a GED. She had her own business for 7 years until she developed cancer. She worked at [REDACTED] for a short time in 2000. States she has osteoporosis on lower side and hip. This is painful all the time. Cancer is in remission. Uses across the counter medication for pain. Had kidney stones. Had taken Lexapro for depression. She has applied for and is appealing a SSI/SSA claim.

6) Exhibit D-2(a), General Physical Exam of 11/4/05 provides diagnoses of (major) back pain, (minor) GERD, IBS, osteoporosis and kidney stones. The ability to work full-time is affirmed with restrictions being "heavy lifting".

7) Exhibit D-4, Psychological Evaluation of 4/23/06 reveals intellectual functioning in the average range. Additional comments: "her profile is suggestive of persons who react to

stress and avoid responsibility by developing physical symptoms.” Diagnoses include Major Depressive Disorder, single episode, severe without psychotic features.

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 § 404.1545 Code of Federal regulations:

Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations.

VIII. CONCLUSIONS OF LAW:

1) There is a five-step sequence of questions to be addressed when evaluating disability.

2) Is the person performing substantial gainful activity?

As of the date of the hearing the claimant was not employed.

3) Does a severe impairment exist which is expected to last one year or result in death?

Medical documentation relating to the claimant's psychological status suggests that her symptoms have more than a minimal effect upon her ability to engage in gainful activity. Impairment is found.

4) If the person has a severe impairment, is the impairment a listed impairment?

Evidence fails to establish a severe "listed impairment", as set forth in the regulations.

5) What is the person's Residual Functional Capacity and can that person still perform his or her former work or can the person do any other work based upon the combined vocational factors of residual functional capacity, age, education, and past work experience?

The claimant is 48 years of age with a GED. The physical exam of 11/4/05 reveals physical limitations consisting only of avoidance of heavy lifting and indicates full- time employment.

The psychological evaluation of 4/23/06 notes that the claimant's profile is suggestive of persons who react to stress and avoid responsibility by developing physical symptoms. She was diagnosed with major Depressive Disorder, single episode, severe without psychotic features. The claimant indicated that she was taking medication for depression but has now discontinued it. Evidence as to the negative impact of the claimant's psychological issues on her employability is inconclusive.

On the basis, of age, education, and residual capacity there are a significant number of employment opportunities existing in the national economy for with the claimant could qualify and is capable of performing.

IX. DECISION:

After reviewing the information presented during the hearing and the applicable policy and regulations, the determination of the Agency as set forth in the November 28, 2005 notification is **upheld**. The claimant is found currently not medically eligible for participation in the Medicaid Program.

X. RIGHT OF APPEAL:

See Attachment.

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

ENTERED this 10th Day of July 2006.

RON ANGLIN
State Hearing Examiner