



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

March 10, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 3, 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 SSI-Related 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. This case should be medically reevaluated no later than June 2006.

Sincerely,

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

cc: Chairman, Board of Review
Janet Wnek, ESW, DHHR

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

_____,

Claimant,

v.

Action Number: 05-BOR-7181

**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 March 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 convened on February 3, 2006 on a timely appeal, filed March 10, 2006.

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
Janet Wnek, 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:

- D-1 WVDHHR Medical Review Team Transmittal Memorandum, dated 10/14/05
- D-2 WVDHHR Disability/Incapacity Evaluation (ES-RT-3) dated 11/15/05
- D-3 WVDHHR Mental Disability/Incapacity Evaluation (DFA-RT-3M) dated 11/15/05
- D-4 Notice of Decision dated 12/08/05
- D-5 Claimant's request for a hearing IM-FH-1 received on 12/20/05
- D-6 Appointment letter with Social Security Administration.
- D-7 Most recent favorable disability determination by MRT - ES-RT-3 dated 6/22/04 and accompanying medical documentation.

VII. FINDINGS OF FACT:

- 1) The Claimant is an active recipient of SSI-Related Medicaid resulting from a favorable disability determination (D-7) from the Medical Review Team, hereinafter MRT, on June 22, 2004. It was noted that the Claimant has received SSI-Related Medicaid uninterrupted since 2001. The ES-RT-3, Disability / Incapacity Evaluation form (D-7), from the Claimant's most recent favorable disability finding in June 2004, 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 June 2005.
- 2) The Claimant's review, according to the dates provided on exhibits D-1 through D-3, was initiated in October 2005. The a Psychiatrist's Summary (OFSORT-15a) was completed and forwarded to the MRT with the WVDHHR MRT Transmittal Memorandum (D-1).
- 3) The MRT returned their findings to the [REDACTED] County DHHR Office on a Disability/Incapacity Evaluation form (ES-RT-3), exhibit D-2 and a Mental Disability/Incapacity Evaluation form (DFA-RT-3M), exhibit D-3, with a signed review date of November 15, 2005.

Exhibit D-2 states in section IV.E. – “No physical disabilities noted.”

Exhibit D-3 states in section IV.E – “Deny Ct is diagnosed Major Depression GAD Personality disorder NOS. Ct’s period of incapacity / disability is 9mo. This does not meet 1 yr disability.

- 4) On December 8, 2005, the Claimant was notified that his application for Medicaid was denied. This notice states in pertinent part:

Your application for Medicaid has been denied effective 12/31/05.

Here is why: Medical Review Team has reviewed _____ Case and has not found no [sic] physical disabilities noted.

- 5) The documentation in the Claimant’s most recent favorable determination includes an April 5, 2004 Psychological Evaluation from [REDACTED] Systems and a Psychiatrist’s Summary completed by [REDACTED] PA-C resulting from a visit concluded on August 25, 2003. Because there is no documentation to identify or substantiate physically disabling conditions, the Claimant’s disability finding- “impairment(s) meet or equal the listing of impairments” must be based on his mental disabilities.
- 6) Section IX of the Social Summary included in exhibit D-1 has the following information under section IX (Reasons for applying) – “Difficulty being around people/in crowds, vary nervous condition. Cont. Pain in the back upper and lower has had several suggery [sic], has some numbness in arms and hands. Has difficullty [sic] in sleeping due to pain. States he is depressed.
- 7) Exhibit D-1, MRT Transmittal Memorandum, is accompanied by a Psychiatrist’s Summary. This document includes some of the following information.
- The Psychiatrist’s Summary (OFS-RT-15a) provides a date of last patient contact of 6/22/05 “medcheck.”
 - The diagnoses include: 296.33 Major Depression, Recurrent, severe, without Psychot, 300.02 General Anxiety Disorder, and 3001.9 Personality Disorder.
 - The Prognosis is “Depression manageable with treatment, possible complication due to physical “medical” problems.
 - The disability/incapacity is expected to last - “lifetime.”
 - Employment limitation: “I would allow 9 months (no work) for treatment to take effect. I don’t see this patient employment limitation based on his psychiatric problems but more towards his physical “medical” limitations.”

No additional medical documentation was submitted.

- 8) Testimony received at the hearing reveals that the Claimant's previous disability determinations have been based on psychiatric disabilities. The Claimant maintains that his mental disability precludes him from maintaining employment. He contends that he has a bad back and that he is severely depressed. He is currently taking antidepressants and pain medication for his lower back.
- 9) 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. [Emphasis added]
- 10) 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)
- 11) 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)
- 12) 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)

- 13) 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 June 2004. Based on the testimony received at the hearing and the documentation reviewed by MRT for the favorable June 2004 disability finding, the Claimant's disability was based on mental disabilities.
- 2) The Code of Federal Regulations state that medical improvement is any decrease in the medical severity of the 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) With regard to MRT's determination that the Claimant's disability does not meet the 1 year time requirement, the West Virginia Income Maintenance Manual states that an individual's disability "has lasted or can be expected to last for a continuous period of not less than 12 months." While the MRT's reason for denial noted that the Claimant's disability was only expected to last 9 months, the Claimant met the 1-year requirement since he has been found disabled every year since 2001.
- 4) The Social Summary Outline and the medical information submitted for the June 2005 medical reevaluation is consistent with the Claimant's most recent favorable finding. The Claimant continues to report chronic mental health issues and more importantly, the Department failed to gather sufficient evidence to cite improvement in symptoms, signs and or laboratory findings.
- 5) Based on the evidence, the Department has failed to followed policy and regulations 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 shall complete a medical reevaluation no later than June 2006. This evaluation should include at a minimum, a psychological evaluation and a general physical from the Claimant's treating physician.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 10th Day of March 2006.

**Thomas E. Arnett
State Hearing Officer**