



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

September 25, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 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 no longer meet the criteria necessary to establish a disability for the SSI-Related Medicaid Program.

It is the decision of the State Hearings Officer to **uphold** the Department's proposal to terminate your SSI-Related Medicaid based on medical eligibility.

Sincerely,

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

cc: Chairman, Board of Review
Ulissa Howell, ESW, DHHR

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

_____,
Claimant,

v.

Action Number: 06-BOR-1167

**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 September 25, 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 August 29, 2006 on a timely appeal, filed February 9, 2006.

It should be noted that Medicaid benefits have continued pending the hearing decision.

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 boyfriend
Ulissa Howell, 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 Mental Disability/Incapacity Evaluation (DFA-RT-3M), completed by MRT on 1/5/06
- D-1A WVDHHR Disability/Incapacity Evaluation completed by the MRT on 8/5/04
- D-2 Notice of Decision dated 2/2/06
- D-3 Claimant's request for a hearing received on 2/9/06
- D-4 Notice of Pre-hearing conference scheduled on 2/23/06
- D-5 WVDHHR Hearing/Grievance Record Information
- D-6 Hearing Scheduling Notice dated 3/3/06
- D-7 Medical information submitted to MRT for reconsideration on 4/18/06
- D-8 WVDHHR MRT Additional Medical Request dated 5/22/06 – Request for updated report from Dr. Walker w/ DFA-RT-15a
- D-9 WVDHHR Mental Disability/Incapacity Evaluation, completed by the MRT on 8/7/06

Claimant's Exhibits:

- C-1 Claimant's list of Medications

VII. FINDINGS OF FACT:

- 1) The Claimant is an active recipient of SSI-Related Medicaid resulting from a favorable disability determination from the Medical Review Team, hereinafter MRT, on August 5, 2004 (Exhibit D-1A). 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 June 2005.
- 2) On or about December 20, 2005, the Claimant's medical records were collected by the Department Worker and forwarded to the MRT. Exhibit D-1 reveals that the Claimant's reevaluation for medical eligibility resulted in the MRT finding that the Claimant is no longer disabled.

- 3) On or about February 2, 2006, the Claimant was notified via a Notice of Decision that the MRT determined that she no longer meets the definition as a disabled individual for purposes of the SSI-Related Medicaid Program and that benefits would stop effective February 28, 2006. The Claimant filed a timely appeal and benefits have continued as requested by the Claimant.
- 4) Testimony and documentation (Exhibit D-1A) reveals that the Claimant was originally found eligible for SSI-Related Medicaid due to a medical condition. The evidence reveals that the Claimant suffered a large bladder prolapse with extension outside the vaginal opening. The Claimant testified that this condition has been corrected with surgery.
- 5) On or about April 18, 2006, the Department Worker submitted a request for reconsideration to the MRT (Exhibit D-7). This request was accompanied with all of the Claimant's medical records that had been submitted to date. The MRT requested an updated report from Dr. [REDACTED] and a DFA-RT-15a (Psychiatrist's Summary).
- 6) The Psychiatrist's Summary (DFA-RT-14), Physician Progress Notes and psychological evaluation dated December 12, 2005 was received from Dr. [REDACTED] office and forwarded to the MRT on or about July 20, 2006. The MRT responded with the WVDHHR Mental Disability/Incapacity Evaluation (DFA-RT-3M) dated August 7, 2006 (Exhibit D-9). Exhibit D-9 reveals under Section III that the client is not mentally disabled. Section IV states: "Deny CT is diagnosed MDD Anxiety Disorder NOS, Personality Disorder NOS. She exhibits moderate functional limits as a result of mental impairments which would not prevent work."
- 7) Because the Claimant's previous medical condition has been corrected by surgery, and this clearly meets Federal Regulations that require the Department to show improvement from the individual's most recent favorable disability determination, the MRT reviewed the Claimant for eligibility based on mental illness. This decision can only consider the testimony provided by the Claimant and the medical evidence submitted for eligibility.
- 8) The Psychiatrist's Summary completed by Dr. [REDACTED] (Exhibit D-8) includes the following: The Claimant was last seen by Dr. [REDACTED] on 2/7/06. Dr. [REDACTED] provided the following diagnostic codes on the Psychiatrist's Summary: AXIS I 296.32 (Major Depressive Disorder, Recurrent, Moderate), 300.00 (Anxiety Disorder NOS with some Social Traits. Axis II 301.9 (Personality Disorder NOS with some Borderline Dependent Traits. The Claimant's prognosis is listed as "fair." The Claimant's Incapacity /Disability is listed as "chronic," however, her employment limitations are "unkn." (Unknown).

Exhibit D-8 includes Physician Progress Notes from 4/5/06, 5/2/06 and 6/27/06. Notations found on the 5/2/06 indicate some improvement with medication, judgement is listed as "fair and insight is "intact."

A Comprehensive Psychiatric Evaluation was completed on the Claimant in December 2005. This evaluation notes that this is the first psychiatric evaluation completed on the Claimant by Dr. [REDACTED]. Dr. [REDACTED] notes in the second paragraph – “She says she is here because the DHHR has sent her so that she can keep her medical card and also because she is looking for a disability.” The Mental Status Exam section of this evaluation states – “She has had occasional thoughts of life not being worth living, but she has never had any active thought of hurting herself, and she is clear that she is safe. She also has some anxiety problems. There is not evidence of psychosis. Cognitive testing is intact.”

- 9) The Claimant testified that she does not believe she is disabled due to her psychiatric diagnoses. She is no longer seeing Dr. [REDACTED] as her primary care physician can prescribe the same medications. She testified that she has had some preliminary blood testing and this has caused concern from her current treating physician due to a low blood platelet count and elevated white blood cell count. Additionally, she was in a motor auto accident (MVA) in December 2005 that resulted in broken ribs, a broken foot and her back was broken. The Claimant, however, failed to provide any additional medical evidence or documentation to indicate that she is currently medically disabled.
- 10) A review of the medical documentation submitted to the MRT (Exhibit D-7) reveals a January 19, 2006 notation that confirms the Claimant was in a MVA on December 26, 2005 and was being treated for Left Rib fx (fracture) and Right foot (heel) fx (fracture). This note goes on to indicate that Dr. [REDACTED] will not refill the Lortab. This exhibit contains physician notes through February 28, 2006 and fails to mention any further diagnosis or treatment related to a fracture of the foot, ribs or back. There is no documentation to indicate that the Claimant has, or will have, a long-term debilitating condition as a result of the injuries received during the December 2005 MVA.
- 11) 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.
- 12) 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)

- 13) 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)
- 14) 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)
- 15) 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 August 2004. This evaluation required that the Claimant be reevaluated for continued medical eligibility in June 2005.
- 2) The medical evidence submitted for reevaluation in December 2005 clearly establishes improvement in the Claimant's medical condition. The Claimant acknowledged on the record that corrective surgery resolved her previous medical condition and further testified that she does not believe her mental health issues are disabling. While the Claimant is not currently employed, the federal regulations state that if you do not have any impairments or combination of impairments which significantly limit your physical or mental ability to do basic work activities {emphasis added}, we will find that you do not have a severe impairment and are, therefore, not disabled. A physical or mental impairment must be established by medical evidence {emphasis added} consisting of signs, symptoms and laboratory findings, not only by your statement of symptoms. While the Claimant indicated that she was injured in a MVA in December 2005 and that she has recently had some irregular blood test results, there is insufficient evidence to demonstrate that the Claimant continues to be disabled for purposes of the SSI-Related Medicaid Program. Eligibility for Medicaid will cease effective immediately.
- 3) The Department has followed proper procedure in determining that you are not disabled.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the Department's proposal to terminate your SSI-Related Medicaid benefits based on medical eligibility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 25th Day of September 2006.

**Thomas E. Arnett
State Hearing Officer**