



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

August 25, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 23, 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 and to appeal the Department's proposal to close your Food Stamp benefits.

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 SSI-Related Medicaid and Food Stamp benefits are 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 last for a continuous period of not less than twelve months. Food Stamp policy states that a student can be exempt from work requirement if he is disabled, however, if the student fails to meet the student exemption policy, as a condition of eligibility, he is required to work an average of 20 hours per week in paid employment. [WV Income Maintenance Manual Section 12.2(A) & 9.1, and 7 CFR ' 273.7 - Code of Federal Regulations]

The information which was submitted at your hearing revealed that you no longer meet the criteria necessary to establish a disability for purposes of the Medicaid Program. Because you are not disabled and you do not work at least 20 hours per week, the Department was correct in its proposal to terminate your Food Stamp benefits.

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 and to **uphold** the Department's proposal to terminate you Food Stamps benefits for failing to meet student exemption status. However, because the Department did not allow for the required 13-day adverse action notice, the Claimant's Food Stamp benefits should close effective March 31, 2006.

Sincerely,

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

cc: Chairman, Board of Review  
Kathy Rogers, ESW, DHHR

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

\_\_\_\_\_,  
**Claimant,**

v.

**Action Number: 06-BOR-1190 (FSP)  
06-BOR-1358 (SSI-Related Med)**

**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 August 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 originally scheduled to convene on May 2, 2006, but was rescheduled when the Claimant established good cause for failure to appear and convened on August 23, 2006 on a timely appeal filed February 22, 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.

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

The purpose of the Food Stamp Program is to provide an effective means of utilizing the nation's abundance of food "to safeguard the health and well-being of the nation's population and raise levels of nutrition among low-income households." This is accomplished through the issuance of EBT benefits to households who meet the eligibility criteria established by the Food and Nutrition Service of the U.S. Department of Agriculture

**III. PARTICIPANTS:**

\_\_\_\_\_, Claimant  
\_\_\_\_\_, CM, \_\_\_\_\_ Center  
Kathy Rogers, 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 (s) 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 and if the Department was correct in its proposal to close the Claimant's Food Stamp case.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 12.2(A) & 9.1  
20 CFR ' 404.1505 - 404.1545 & 20 CFR ' 404.1594 - Code of Federal Regulations  
7 CFR ' 273.7 - Code of Federal Regulations

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Department's Hearing Summary
- D-2 ES-RT-3 Cover Letter
- D-3 WVIMM 9.1
- D-4 Notice of Decision dated 2/16/06
- D-5 ES-RT-3 Disability/Incapacity Evaluation from October 2004.

**VII. FINDINGS OF FACT:**

- 1) On or about February 16, 2005, the Claimant was notified via a Notice of Decision (D-4) that his Food Stamp benefits would stop effective February 2006 as he is an ineligible student. This notice also states that SSI-Related Medicaid will stop effective February 2006 as he is not Aged, Blind or Disabled. While Food Stamp and Medicaid benefits have continued pending the appeal, it should be noted that the Claimant was not provided the required 13-day adverse action notice for closure of benefits.

- 2) The Claimant is an active recipient of SSI-Related Medicaid resulting from a favorable disability determination (Exhibit D-5) from the Medical Review Team, hereinafter MRT, on October 26, 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.
- 3) In addition to receiving SSI-Related Medicaid, the Claimant is a recipient of Food Stamp benefits. Because the Claimant has been determined disabled by the MRT, the Claimant was exempt from Food Stamp student work requirements.
- 4) On or about November 10, 2005, the Claimant attended an interview wherein the Department Worker completed a Social Summary Outline. On November 22, 2005 medical records were requested from the Claimant's treating physicians and this information was forwarded to the MRT on or about January 27, 2006 (Please see Exhibit D-2).
- 5) On February 10, 2006, the MRT completed the Claimant's disability evaluation and returned their findings to the Department on a DFA-RT-3M (Mental Disability/Incapacity Evaluation). This document, also in Exhibit D-2, states under section IV.E. – "Deny Ct is diagnosed Bipolar II Depressive Disorder 15A indicates Ct able to perform low stress work without a lot of contact with people."
- 6) The MRT's findings are the result of a Physician's Summary (DFA-RT-8a) completed by Dr. [REDACTED] (according to testimony received at the hearing as the signature is illegible). Dr. [REDACTED] indicates in this document (found in Exhibit D-2) that the Claimant's prognosis is "Same" and that the Incapacity/Disability is expected to last a "lifetime," however, noted Employment Limitations are - "Requires work where he won't be around a lot of people. Something low stress."
- 7) Testimony received at the hearing indicates that the Claimant's most recent favorable disability evaluation was based mental health findings. Exhibit D-5 contains a Physician's Summary that was completed by [REDACTED] M.D., which states prognosis is "fair." The Incapacity/Disability was expected to last "6-12 months" and Employment Limitations were – "Needs to be re-evaluated by psychology in order to be ok for him to return to work." Dr. [REDACTED] clearly indicates that the Claimant was unable work.
- 8) The Claimant is a 43 year old male. He is a high school graduate and has been attending college full-time. He testified that he used to work full-time as a manager in retail sales but had to quit when his mental illness started to get worse. He has been a recipient of SSI-Related Medicaid based on a disability since October 2003.
- 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.

- 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).

- 14) The WVIMM, Chapter 9.1, provides information about Food Stamp eligibility determination groups. This policy states that if a member of the Food Stamp AG is a student and meets any one of the following criteria, he is not considered a student for Food Stamp purposes. Among the listed student exemption criterion is – “He is physically or mentally disabled.” The Department testified that once the Claimant failed to meet the student exemption policy based on a disability, he is required to work an average of 20 hours per week in paid employment (Exhibit D-3). Because the Claimant was not employed an average of 20 hours per week, the Department determined that he was no longer eligible for Food Stamp benefits.

### **VIII. CONCLUSIONS OF LAW:**

- 1) The Claimant was originally found disabled in October 2003 and his most recent favorable disability determination occurred in October 2004.
- 2) 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).
- 3) The medical evidence submitted for reevaluation clearly establishes improvement in the Claimant's medical condition. While the Claimant is not currently employed, employment limitations, as indicated by Dr. [REDACTED] include work in a low stress position that allows for limited exposure to a lot of people. Although the Claimant's condition affects employment opportunities, when considering the Claimant's age, education and past work experience, there are several positions within the national economy for which the Claimant would qualify. Federal Regulations state that 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. Based on the evidence, the Department has followed proper procedure in determining that you are not disabled. Eligibility for Medicaid will cease effective immediately.
- 4) Whereas the evidence fails to support a disability finding, the Department was correct in their proposal to terminate the Claimant's Food Stamp benefits. However, because notice did not provide the Claimant 13-days advance notice before adverse action was to be effective, the Claimant's Food Stamp benefits should have been closed effective March 31, 2006.

### **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 and to **uphold** the Department's proposal to terminate you Food Stamps benefits for failing to meet student exemption status.

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

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 25<sup>th</sup> Day of August 2006.**

---

**Thomas E. Arnett  
State Hearing Officer**