



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 23, 2006

Dear Ms. _____

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits under the SSI-Related Medicaid Program.

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 SSI-Related Medicaid Program is based on current policy and regulations. Some of these regulations state as follows: 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. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at your hearing revealed that in the opinion of the State Hearing Officer, you continue to meet the above stated definition.

It is the decision of the State Hearing Officer to reverse the proposal of the Department to terminate your benefits under the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Mary Hall, DHHR

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

_____,
Claimant,

v. **Action Number: 06-BOR-2970**

**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 October 5, 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 October 5, 2006 on a timely appeal, filed September 15, 2006.

It should be noted here that the claimant's benefits have been continued pending the hearing decision.

II. PROGRAM PURPOSE:

The Program entitled SSI-Related 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

Mary Hall, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, 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 eligibility requirement of categorical relatedness for SSI Related Medicaid by qualifying as a disabled person as defined by the Department.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2(A)
20 CFR 416.905 and 416.920
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2
20 CFR 404.1594 (b) (1)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Form IG-BR-29 Hearing/Grievance Record Information
- D-2 Notification Letter dated 09/13/2006
- D-3 MRT Packet dated 08/17/2006
- D-4 Income Maintenance Policy 12.1; 12.11A
- D-5 Department's Summary

Claimant's Exhibits:

- C-1 List of Medications
- C-2 Appointment Notice for Dr. [REDACTED]
- C-3 Notice from [REDACTED] P.L.L.C.

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of SSI-Related Medicaid based on being found mentally disabled by the Medical Review Team (MRT) in February 2005. The case was to be reevaluated in February 2006.
- 2) Medical and social information was gathered by the worker and the case was submitted to MRT for reevaluation on 08/21/2006. On 09/12/2006, the information was returned by MRT with a finding of not mentally disabled. The decision reads "Deny client is diagnosed Depressive Disorder NOS, Anxiety Disorder NOS, Borderline Intellectual Functioning. Client exhibits moderate functional limits as a result of mental impairments which would not prevent work." There was also a finding of not physically disabled. The decision reads in part "No physical disabilities noted. The

above does not qualify for MAO-D” (D-3)

- 3) The claimant was sent a closure notice on 09/13/2006. The letter reads in part: Your SSI Related Medicaid will stop. You will not receive this benefit after September 2006. Reason: The State Medical Review Team decided that this person is neither disabled or incapacitated. (D-2) A hearing was requested on 09/15/2006.
- 4) The claimant is 22 years of age and received her high school diploma this year. She has had no specialized training. The only work she reports is secretarial work which lasted a week and a day. “There were bad people there.” She reports her medical ailments as migraines, eye infection, toxoplasmosis, legs go out on her, and white blood cells are down.
- 5) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in substantial gainful employment by reason of 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.
- 6) The State's definition of disability for Medicaid is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR 416.905.
- 7) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI; these are set forth in 20 CFR 416.920.
- 8) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.
- 9) The claimant is not employed.
- 10) The second sequential step is:

If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled.
- 11) General physical dated 03/23/2006 by [REDACTED] reads in part: Major Diagnosis: Migraine Headaches. Minor Diagnosis: Persistent Eye Disease. Applicant is able to work at customary or like work. The application is able to perform other full time work. Unaware of any work situations to avoid.

12) Psychological evaluation dated 02/20/2006 by [REDACTED] M.S., Licensed Psychologist, reads in part:

Medical Health: Ms. _____ described her overall health as “poor”. She is not currently prescribed any medication. Ms. _____ reports that she experiences everyday, constantly.

Education: Ms. _____ completed the twelfth grade. She reports that she home based school program in January 2006.

Behavioral Observation/Mental Status: Short-term memory was below average as she was able to recall three of four objects after several minutes. Concentration was below average as she completed a word reversal task in a slower than average manner. She was oriented to all spheres. Ms. _____ was able to interpret parables concrete reasoning. Ms. _____ ’s affect was appropriate and reactive. She her mood as “okay”. Observed mood was anxious. Her speech was congruent with affect, conversational in nature, and of average volume and tone. Her attention and concentration were judged to be adequate for the evaluation. She was able to understand and follow instructions.

Test Results: Wechsler Adult Intelligence Scale-Revision III: Verbal IQ: 83; Performance IQ: 76; Full Scale IQ: 78. Overall, on the WAIS-III, Ms. _____ ’s cognitive functioning was measured within the Borderline range. **Wide Range Achievement Test-Revision Three:** On the WRAT3, Ms. _____ ’s

scores in reading and spelling were measured above her ability scores. Scores in arithmetic were commensurate with ability scores. She is reading in the Average range and at the Post High School grade level, spelling in the Average range and at the High School Grade level, and completing arithmetic in the Low Average range and at the Sixth Grade Level. **Minnesota Multiphasic Personality Inventory Test-Revision 2:** An analysis of the MMPI-2 validity scales reveals that the personality profile obtained is an invalid representation of Ms. _____ ’s current

functioning. **Beck Depression Inventory-Revision Two:** On the BDI-II, Ms.

reported depressive symptoms that were measured within the Mild range (14). **Beck Anxiety Inventory:** On the BAI, Ms. _____ reported anxiety symptoms that

measured within the Mild range (11). **Bender Visual Motor Gestalt Test:** ON the BVMGT, Ms. _____ produced drawings with few errors. This is not suggestive

brain damage or organicity.

Diagnostic Impression:

Axis I: 311 Depressive Disorder NOS
300 Anxiety Disorder NOS
Axis II: V62.89 Borderline Intellectual Functioning
Axis V: 56

Summary/Recommendations: Cognitive ability was measured within the borderline range. Depression and anxiety were measured within the mild range. Visual motor coordination was commensurate with cognitive ability. Ms. _____ should be referred to a psychiatrist to assess the need for psychotropic medications. _____ should also continue to receive mental health counseling to address her psychological issues. Clinicians may find an instructional approach to be beneficial.

- 13) The MRT found the claimant mentally disabled 02/02/2005. This was based on a psychological report dated 01/03/2005 from _____ M.S., Licensed Psychologist. The report reads in part:

Behavioral Observation/Mental Status: Ms. _____ was able to recall two out of three words after several minutes. She was able to complete a serial three-subtraction task for five steps but made three calculation errors. She was successful at spelling the word “WORLD” and she was successful at this spelling backwards, “DLROW”. She was oriented in all spheres. Ms. _____ was able to interpret parables through concrete reasoning. Ms. _____’s affect was restricted and low. She described her mood as “unsure.” Her speech was congruent with her affect, conversational in nature but of low volume and soft tone. Her attention and concentration were judged to be slightly deficient. She was able to understand and follow instructions.

Test Results: **Wechsler Adult Intelligence Scale-Revision III:** Verbal IQ: 73; Performance IQ: 70; and Full Scale IQ: 69. Overall, on the WAIS-III, Ms. _____’s cognitive functioning was measured within the uppermost limits of the mentally Handicapped range. On the verbal items, she scored within the Borderline range. On performance items, she scored within the Borderline range. **Wide Range Achievement Test-Revision Three:** On the WRAT3, Ms. _____’s achievement scores were comparable to her ability scores however, she scored quite a bit higher on the reading task. This suggests she may enjoy reading or has a high motivation to increase her reading level. On the Reading subtest, she received a score within the Average range and at the High School level. On the Arithmetic subtest, she received a score within the Mentally Handicapped range and at the Third Grade level. On the Spelling subtest, she scored within the Mentally Handicapped range and at the Second Grade level. **Millon Clinical Multiaxial Inventory-III (MCMI-III):** Due to Ms. _____’s low cognitive functioning, the following personality interpretation should be read with caution. Strong evidence indicates that Ms. _____ woman has delusional disorder evidenced by symptoms such as mixed jealousy, persecutory beliefs, and ideas of reference. Moreover, these symptoms are probably interwoven with features of one or two personality syndromes. There is reason to believe that at least a moderate level of pathology characterizes the overall personality organization of Ms. _____. The MCMI-III profile of Ms. _____ suggests that she feels trapped by an intense conflict between a desire to withdraw from others and a fear of embarking on her own. This struggle may result in acute emotional turmoil, periods of despondency, occasional irrational thinking, bizarre behavior, and an anxious wariness about social

encounters. **Beck Suicide Scale (BSS):** Due to Ms. _____ 's low cognitive functioning, the following interpretation should be read with caution. On the BSS, Ms. _____ scored an eight. She states that her reasons for living or dying are about equal....**Beck Depression Inventory-Revision Two:** Due to Ms. _____ 's low cognitive functioning, the following interpretation should be read with caution. On the BDI-II, Ms. _____ reported depressive symptoms that were measured within the Severe range (30). **Beck Anxiety Inventory:** Due to Ms. _____ 's low cognitive functioning, the following interpretation should be read with caution. On the BAI, Ms. _____ reported anxiety symptoms that were measured within the Moderate range (20). **Bender Visual Motor Gestalt Test:** On the BVMGT, Ms. _____ produced drawings that contained a few distortion errors. This is comparable to her cognitive functioning and is not suggestive of brain damage or organicity.

- 14) Psychological report dated 01/03/2005 from [REDACTED] M.S. continues to read in part:

Diagnostic Impression:

Axis I: 296.33 Major Depressive Disorder, Recurrent, Severe
Axis II: 317 Mild Mental Retardation
Axis V: 49

Summary Recommendations: Her cognitive functioning was measured within the Mild Mentally Handicapped range. Her personality profile suggests that she has delusional symptoms and characteristics of a personality disorder. She reports that she recently attempted to commit suicide. She reports depressive symptoms that were measured within the Severe range. She reported anxiety symptoms that were measured within the Moderate range.

Due to the severity of her symptoms, Ms. _____ should be referred to mental health counseling so her suicidal ideation can be monitored. However, due to her low cognitive functioning, the prognosis for significant improvement is poor.

- 15) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that 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 psychological evidence does support the requirement that the claimant must have a severe impairment which has lasted or can be expected to last one year or result in death.
- 2) The evidence shows there has been no significant improvement in the claimant's condition. The claimant was found mentally disabled by the MRT in February 2005.

The most recent psychological report in 2006, while demonstrating that the depression and anxiety are not as severe, shows that the claimant still has mental health problems. One reason for this improvement may be the receipt of the medical card.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant continues to meet the definition of disability. The Department is reversed in the proposal to terminate the claimant's benefits under the SSI-Related Medicaid Program. The action described in the notification letter dated September 13, 2006 will not be taken. The case will be reevaluated in October 2007 with an updated psychological report.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of October, 2006.

**Margaret M. Mann
State Hearing Officer**