



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General

Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

July 7, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held June 29, 2011. Your hearing request was based on the Department of Health and Human Resources' determination that you are not medically eligible to meet program requirements for 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. These regulations provide 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 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. [WV Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to deny your application for SSI-Related Medicaid benefits.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Penny Tinsman, Economic Service Supervisor

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1055**

**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 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 a timely appeal, filed April 29, 2011.

**II. PROGRAM PURPOSE:**

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  
Penny Tinsman, Economic Service Supervisor

Presiding at the hearing was Eric L. Phillips , State Hearing Officer and a member of the Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Claimant meets the medical eligibility requirement necessary to qualify as a 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 Hearing Summary
- D-2 Medical Review Team Transmittal Memorandum
- D-3 Social Summary
- D-4 Additional Medical Request dated December 22, 2010
- D-5 Psychological Evaluation dated February 17, 2011
- D-6 Mental Disability/Incapacity Evaluation dated March 18, 2011
- D-7 Notice of Decision dated April 15, 2011
- D-8 West Virginia Income Maintenance Manual Chapter 12.2

**VII. FINDINGS OF FACT:**

- 1) On November 3, 2010, the Claimant completed an application for SSI-Related Medicaid. The corresponding information derived from the application was sent to the Medical Review Team, hereinafter MRT, to determine if the Claimant met the disability requirements under the program guidelines. As part of the application process, the Claimant completed Exhibit D-3, Social Summary, which identified her reasons for applying for the program as "Diagnosed with general anxiety disorder—under [sic] to work emotional problems."
- 2) On December 22, 2010, MRT issued the Department Exhibit D-4, Additional Medical Request, as it determined that the information submitted with the Claimant's application was not sufficient for an appropriate determination of the Claimant's disability. Exhibit D-4 documents in pertinent part:

The medical and/or social information furnished on this case is not sufficient to enable the reviewing physician to determine whether disability or incapacity exists. The reviewing physician is required the following information before a decision can be made.—Psychological Evaluation w/IQ 90801, 96101.

- 3) The Claimant adhered to MRT's request for additional information and completed Exhibit D-5, Psychological Evaluation on February 17, 2011 with [REDACTED] The summary and recommendations from the evaluation is documented in the exhibit as:

----- is a 45 year old female who was seen at this office for a psychological evaluation as part of her application for a medical card. ----- is functioning in the Borderline (slow learner) range of intelligence, with her achievement relatively consistent with her ability level. Personality testing show she is impressionable and has social problems.

----- presents with mental health issues, including a history of substance dependence, which will likely require intensive and ongoing services. Her prognosis is poor due to repeated relapse and intermittent treatment.

Additionally, the Claimant was administered an assessment of her cognitive functioning (WAIS-IV) as part of the evaluation. Exhibit D-4 documents in pertinent part:

-----'s scores place her in the Borderline (slow learner) range of intelligence. Working memory is in the average range, an area of relative strength. This area reflects an ability to shift mental operations and use encoding and rehearsal strategies, and indicates good cognitive flexibility for -----.

A review of the psychological evaluation includes the Claimant's diagnoses of alcohol dependence, cocaine abuse, depressive disorder NOS, anxiety disorder, NOS, borderline intellectual function and personality disorder NOS. This additional information was sent to MRT for review on March 15, 2011.

- 4) In response to the information submitted to MRT, Exhibit D-6 Mental Disability/Incapacity Evaluation was completed on March 18, 2011 and returned to the Department. This exhibit reveals that MRT findings established that the Claimant was not mentally disabled for SSI-Related Medicaid program. Section IV. B of the exhibit documents that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limits her ability to perform basic work activity. Section IV. E of the exhibit states in pertinent part:

Deny. Is diagnosed alcohol dependence in early full remission. Cocaine abuse. Depressive disorder not otherwise specified, Anxiety disorder not otherwise specified, borderline intellectual functioning and personality disorder not otherwise specified. She exhibits moderate functional limits which would not prevent work activity.

- 5) On April 15, 2011, the Department issued the Claimant Exhibit D-7, Notice of Decision which documents in pertinent part:

Your application for Medicaid has been denied effective March 2011.

Here is why: The State Medical Review Team has declared that you are not disabled.

- 6) The Claimant testified that she has been unemployed for the last eight years and has a pending application with the Social Security Administration regarding her disability. The Claimant indicated health issues and was most recently hospitalized with pneumonia and pancreatitis. The Claimant reported prior hospitalizations concerning her liver. The Claimant stated that she has no medical insurance and is in need for psychiatric help and assistance with bipolar disorder and her medications. The Claimant purported that she needs medical treatment to "get back on track" and indicated problems with staying on task due to her mental condition.

7) 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.

8) 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)

9) 20 CFR§ 40-4.1509, & 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 impairment(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).

10) 20 CFR § 404.1508, 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)

11) 20 CFR § 404.1521 Code of Federal Regulations:

(a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) Basic work activities. When we talk about basic work activities we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting

**VIII. CONCLUSIONS OF LAW:**

1) Regulations that govern the SSI-Related Medicaid Program require that an eligible individual must have a severe impairment(s) and meet the duration requirement in order for there to be a disability finding. 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 a statement of symptoms.

2) The Claimant is not currently performing any substantial gainful activity and has not been employed for the last eight years. There is no question that the Claimant suffers from mental health issues; however, the clinical evidence submitted to MRT failed to demonstrate a severe impairment. More specifically, administered test of cognitive functioning conclude that the Claimant is in the borderline range of intelligence and fails to represent a severe impairment which would significantly limit the Claimant's ability to perform basic work activities.

3) Based on the documentation provided, the Claimant does not meet the definition of disability as pursuant to SSI-related Medicaid Requirements.

**IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's application for SSI-related Medicaid assistance.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of July, 2011.**

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**Eric L. Phillips**  
**State Hearing Officer**