



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Earl Ray Tomblin
Governor

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

July 27, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held July 15, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your SSI-Related Medicaid and decision to deny your Medicaid Work Incentive application based on a disability decision by the state Medical Review Team.

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 and Medicaid Work Incentive (M-WIN) programs are based on current policy and regulations. These regulations provide that the definition of disability for Medicaid purposes is the same as the definitions used by the Social Security Administration in determining eligibility for SSI or RSDI based on disability.

The information submitted at your hearing revealed that you do not meet the federal definition of disability and do not qualify for SSI-Related Medicaid or M-WIN.

It is the decision of the State Hearings Officer to **Uphold** the proposal of the Department to terminate your SSI-Related Medicaid and deny your M-WIN application.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review
Fred Burns, Economic Service Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1313

**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 July 15, 2011 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 June 6, 2011. It should be noted here that the claimant's benefits under the SSI-Related Medicaid program have continued pending a decision.

II. PROGRAM PURPOSE:

The programs entitled SSI-Related Medicaid and Medicaid Work Incentive are administered by the West Virginia Department of Health and 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 Medicaid Work Incentive (M-WIN) coverage group was established by West Virginia Legislation to assist individuals with disabilities in becoming independent of public assistance by enabling them to enter the workforce without losing essential medical care. To be eligible, a person must be disabled according to the Social Security Administration definition and must be engaged in competitive employment. Participants pay an enrollment fee and a monthly premium.

III. PARTICIPANTS:

-----, Claimant

-----, Witness for Claimant

Fred Burns, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether or not the Department's decisions to terminate Claimant's SSI-Related Medicaid and deny Claimant Medicaid Work Incentive application is correct.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual § 12.2 A, 23.11 and 23.12 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 WV Income Maintenance Manual § 12.2 A
- D-2 Notification Letter dated May 19, 2011
- D-3 Medical Review Team Decision received May 17, 2011
- D-4 Medical Records
- D-5 Medical Review Team Decision received September 19, 2010

VII. FINDINGS OF FACT:

- 1) Claimant had been determined disabled by the state Medical Review Team (MRT) in September 2010 and was approved for SSI-Related Medicaid based on this decision. Claimant's medical re-evaluation was due in June 2011.
- 2) In March 2011, Claimant reported that she had started working and an application for the Medicaid Work Incentive (M-WIN) program was made. Claimant was referred to MRT to be evaluated as a working disabled adult and its decision received May 17, 2011 reads in pertinent parts (D-3):

After considering all information a decision has been made that the above client is not: Disabled – SSI-Related Medicaid or Disabled – Medicaid Work Incentive

No conditions noted that would be disabling. The above does not qualify for MAO or M-WIN.

- 3) Claimant testified that she has type II diabetes, hypertension, high cholesterol, high triglycerides and polycystic ovarian syndrome. Claimant stated she started working

again as a Certified Nursing Assistance, but that her job did not offer health insurance. Claimant stated her medications are expensive and she cannot afford them without Medicaid. Claimant stated the physician who treats her polycystic ovarian syndrome wants her to have blood work to determine why she is not menstruating.

Claimant stated she is currently not working but expects to go back to work in August 2011. Claimant stated she had taken time off from work to help her father while he underwent surgery.

- 4) Medical records from [REDACTED] MD for office visit February 8, 2011, which were submitted to MRT for the evaluation, reads in pertinent parts (D-4):

Diagnoses: Diabetes mellitus type II, reflux esophagitis, polycystic ovaries, allergic rhinitis, lipodystrophy, pain in joint involving hand

- 5) West Virginia Income Maintenance Manual § 12.2 A states:

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.

- 6) West Virginia Income Maintenance Manual § 23.12 A states:

The M-WIN applicant/recipient must meet the disability criteria established by the Social Security Administration. If the individual does not receive RSDI based on disability, disability must be established by MRT.

- 7) West Virginia Income Maintenance Manual § 23.11 A(2) states:

Upon receipt of the notification of MRT's final decision, the Worker records receipt of the form and the decision in RAPIDS CMCC and ANDI. Additional action depends on the content of the information on the notification form.

SSI-RELATED MEDICAID AND M-WIN

Client Is Not Blind Or Disabled

If the applicant is found not to be disabled or blind, the application is denied, the case closed or the individual is excluded from the AG after advance notice.

- 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 Section 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 Section 404.1520f)

- 9) 20 CFR § 404.1508, 404.1509 and 404.1520 Code of Federal Regulations states:

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)

- 10) 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)

VIII. CONCLUSIONS OF LAW:

- 1) Policy holds that for Medicaid purposes, the individual must meet the federal definition of disability used by the Social Security Administration to be eligible for SSI-Related Medicaid or M-WIN.
- 2) At the time of the M-WIN application in March 2011, Claimant was performing substantial gainful activity as defined in 20 CFR § 404.1510. While employment is a requirement for the M-WIN program, Claimant's ability to perform substantial gainful employment excludes her from meeting this requirement.
- 3) There was no documentation submitted that Claimant's impairments are expected to last at least 12 months as required in 20 CFR § 404.1509.
- 4) Medical documentation submitted fails to establish a severe impairment as set forth in 20 CFR § 404.1520. Claimant does not meet the federal definition of disability as determined by the Social Security Administration and does not qualify for SSI-Related Medicaid. Without a finding of disability, Claimant also does not qualify for the M-WIN program.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate Claimant's SSI-Related Medicaid and deny Claimant's application for the Medicaid Work Incentive program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 27th day of July 2011.

Kristi Logan
State Hearing Officer