



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

August 22, 2011

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 4, 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 terminate your eligibility for SSI-Related Medicaid benefits.

Sincerely,

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

cc: Erika Young, Chairman, Board of Review
Ann Hubbard, Economic Service Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 11-BOR-1362

**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 June 16, 2011.

It should be noted here that the Claimant's benefits under the SSI Related Medicaid Program continue at the previous level of determination pending a decision from the State Hearing Officer.

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
-----, Claimant's mother
Ann Hubbard, 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 with Social Summary
- D-3 Additional Medical Request dated January 27, 2011
- D-4 Psychological Evaluation dated February 25, 2011
- D-5a Mental Disability/Incapacity Evaluation dated March 7, 2011
- D-5b Disability/Incapacity Evaluation dated March 7, 2011
- D-6 Notice of Decision dated April 14, 2011
- D-7 West Virginia Income Maintenance Manual Chapter 12.2

Claimants' Exhibits:

- C-1 Claimant's prior medical information from [REDACTED] Jr., D.O. for 2007-2008
- C-2 Wikipedia information describing Greater Trochanteric Pain Syndrome-(*unknown last retrieval date*)
- C-3 Wikipedia information describing Piriformis Syndrome-(*unknown last retrieval date*)
- C-4 Wikipedia information describing Asperger Syndrome-(*unknown last retrieval date*)
- C-5 Wikipedia on Phobia-(*unknown last retrieval date*)
- C-6 eHow.com Dishwasher Job Description-*last retrieval date May 25, 2011*
- C-7 Claimant's x-ray dated March 10, 2010 from [REDACTED] Chiropractic Physician
- C-8 Claimant's x-ray dated July 9, 2011 from [REDACTED] Chiropractic Physician

VII. FINDINGS OF FACT:

- 1) On December 2, 2010, the Claimant completed a recertification for his SSI-Related Medicaid benefits. The corresponding information derived from the recertification was sent to the Medical Review Team, hereinafter MRT, to determine if the Claimant continued to meet the disability requirements under the program guidelines.

- 2) As part of the recertification process, the Claimant completed an updated Social Summary and General Physical which were included in Exhibit D-2, Medical Review Team Transmittal Memorandum. The Social Summary portion of Exhibit D-2 documents the Claimant's reasons for applying for the program as, "Has Asperger's Syndrome. Client states he is unable to sit or stand for long periods of time." Additionally, the Claimant completed a General Physical examination with [REDACTED] M.D. The corresponding General Physical examination included in Exhibit D-2 documents the Claimant's statement of incapacity/disability as, "Can't stand long periods. Lifting difficult/painful, thrown back out with bending, left hip pain, standing MVA (motor vehicle accident) 12/27/2004. MRI hip normal 11/12/08 and 8/23/2007. The General Physical examination also documents that the physician indicated the following:

Is applicant able to work full-time at customary occupation or like work? "not known psychiatric treating"

Is applicant able to perform other full time work? "not known"

What work situations, if any, should be avoided: "not sure"

Duration of inability to work full time: "has normal muscular skeletal exam"

Summary of Conclusions: "c/o post MVA little objective on exam, probable mild trochanteric [sic] bursitis. Psychiatric problems."

- 3) On January 27, 2011, MRT issued the Department Exhibit D-3, Additional Medical Request, because it determined that the information submitted for the determination of the Claimant's disability was insufficient. Exhibit D-3 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 [sic].

- 4) The Claimant adhered to MRT's request for additional information and completed Exhibit D-4, Psychological Evaluation on February 25, 2011 with [REDACTED] which was submitted to MRI on March 4, 2011. The evaluation documents in pertinent part:

Regarding mental health history, ----- began receiving mental health services in the 4th grade. He received counseling services on and off throughout his life up until approximately a year ago. His most recent treatment was an outpatient at [REDACTED] with Dr. [REDACTED] Psychiatrist. He began seeing Dr. [REDACTED] due to experiencing anxiety attacks regarding crossing the road. ----- admitted that he took the medication for about a week and then stopped. I would note that in the past, records from [REDACTED] indicated that he saw both a psychiatrist and a social worker. Those records provide diagnoses of ADD, Asperger's, and Phobias. Dependent Personality

Disorder was also diagnosed. Records also indicate that he was last seen around March, 2010. ----- confirms this today.

...

----- has held several part-time jobs in the past. Each of which has typically lasted less than three months prior to 1998. However, from 1998 to 2006, he was employed on and off at various restaurants, and was also employed at [REDACTED] [sic]. His longest employment was for about two years at [REDACTED]. His last employment was as a dishwasher and grill cook at [REDACTED] Restaurant in [REDACTED] WV, where he was employed from March, 2005, to October, 2005. ----- related that he left that job because he was missing too much work due to back pain. He has not worked in the past five years.

...

----- seems to be doing well with regard to his emotional status. He reports improvement in the anxiety/phobic arena. He is currently medication free and has been so for at least a year. From the psychological standpoint, prognosis without treatment appears good.

- 5) In response to the information submitted to the MRT, Exhibit D-5a, Mental Disability/Incapacity Evaluation and Exhibit D-5b, Disability/Incapacity Evaluation were completed on March 7, 2011, as a decision to MRT's findings regarding the Claimant's disability. Exhibit D-5a reveals that MRT findings established that the Claimant was not mentally disabled for the 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 his ability to perform basic work activity. Section IV. E of the exhibit documents in pertinent part:

Deny. Patient is diagnosed Schizoid Personality disorder. He exhibits nonsevere functional limits.

Exhibit D-5b reveals that the MRT findings established that the Claimant was not physically disabled for the SSI-Related Medicaid program. Section IV. B of this exhibit documents that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limits his ability to perform basic work activity. Section IV. E. of the exhibit documents in pertinent part:

Examination report of 12/3/10 shows no evidence of a one year physical disability.

- 6) On April 14, 2011, the Department issued the Claimant Exhibit D-6, Notice of Decision which documents in pertinent part:

Your SSI Related Medicaid for the Aged, Blind and Disabled benefit will stop.
You will not receive this benefit after April, 2011.

Reason: Individual is not Aged, Blind or Disabled which is a requirement for this Medicaid coverage.

7) -----, the Claimant's representative and mother testified that the Claimant experienced a motor vehicle accident, in which he was struck by a moving car while crossing the street, and is still experiencing problems with his hip. -----provided Exhibit C-1, Claimant's past medical information from [REDACTED] D.O. This exhibit documents the Claimant's physician visits from July, 2007 through August, 2007 and September, 2008 through November, 2008. This exhibit documents the physician's diagnosis of left hip pain, left hip Trochanteric Bursitis, and Piriformis Syndrome. ----- provided Exhibit C-2, Wikipedia information describing Greater Trochanteric Pain Syndrome. Exhibit C-2 describes the Claimant's diagnosis as an "inflammation of the trochanteric bursa, a part of the hip." Additionally, -----provided Exhibit C-3, Wikipedia information describing Piriformis Syndrome. Exhibit C-3 describes the Claimant's diagnosis as a "neuromuscular disorder that occurs when the sciatic nerve is compressed or otherwise irritated by the piriformis muscle causing pain, tingling and numbness in the buttocks and along the path of the sciatic nerve descending down the lower thigh and into the leg." -----indicated that her son's physician informed him that his diagnosis could not be corrected surgically and referred him to a pain management clinic which informed him that he "would have to live with it [pain]." -----provided information from the Claimant's chiropractic physician concerning the Claimant's current health (Exhibit C-7 and C-8). Exhibit C-7, Claimant's x-ray dated March 10, 2010 from [REDACTED] Chiropractic Physician documents the Claimant's "third lumbar disc is too close and posterior from normal." Exhibit C-8, Claimant's x-ray dated July 9, 2011 from [REDACTED] Chiropractic Physician documents, "L3-Bottom of L3 vertebra [sic] is posterior indicating a disc injury. L4-Bottom of L4 is posterior indicating a disc injury. It shall be noted that Exhibit C-7 and Exhibit C-8 were not provided to the Department as part of the Claimant's medical history to the MRT.

-----testified that her son has been diagnosed with Asperger's Syndrome and provided its definition in Exhibit C-4. This exhibit documents the Claimant's diagnosis as "an autism spectrum disorder that is characterized by significant difficulties in social interaction, along with restricted and repetitive patterns of behavior and interest. It differs from other autism spectrum disorders by its relative preservation of linguistic and cognitive development." -----testified that the Claimant experiences phobias, (Exhibit C-5) with a main phobia of crossing the street due to his motor vehicle accident. Testimony indicated that the Claimant was employed as a dishwasher prior to his accident. -----indicated that the Claimant has been physically and mentally unable to gain employment since his accident. Testimony indicated that the Claimant's previous employment required heavy lifting, (Exhibit C-6) which he is currently unable to complete this function due to his diagnosis. Testimony indicated that the Claimant has completed an application with the Social Security Administration for disability benefits and is currently in the appeals process.

The Claimant testified that he experienced a motor vehicle accident in December, 2004. The Claimant indicated his previous employment required him to lift fifty pounds or to stand eight hours a day and he cannot complete these tasks.

8) 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.

9) 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)

10) 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).

11) 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)

12) 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 since he experienced a motor vehicle accident. However, the evidence submitted to MRT failed to demonstrate a severe impairment. More specifically, the general physical examination failed to document a specific timeframe regarding the Claimant's inability to engage in an employment activity and documented a normal muscular skeleton exam. There is no question that the Claimant suffers from mental health issues deriving from a traumatic experience; however, the clinical evidence submitted to MRT failed to demonstrate a severe psychological impairment. More specifically, the psychologist documents that the Claimant is doing well and progressing with his phobia and was medication free. Additionally, the psychologist noted that the Claimant's prognosis appears good without treatment; therefore, indicating a non-severe impairment.
- 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 terminate the Claimant's 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 August, 2011.

**Eric L. Phillips
State Hearing Officer**