



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661

Earl Ray Tomblin  
Governor

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

November 18, 2011

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Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 6, 2011. Your hearing request was based on the Department of Health and Human Resources' action to deny your M-WIN Medicaid application due to a disability evaluation by the Medical Review Team.

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 M-WIN Medicaid Program is based on current policy and regulations. Some of these regulations specify that the Medical Review Team evaluates medical documentation to determine if an applicant has a significant impairment expected to last for a year or more, or if the application has psychological impairments as indicated by acceptable clinical diagnostic techniques. [WV Income Maintenance Manual Section 23.12.A and U.S. Code of Federal Regulations §404.1509 and §404.1508]

Information submitted at your hearing indicates that you did not provide substantial documentation for the Medical Review Team to find you disabled and therefore eligible for the M-WIN program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny your application for the M-WIN Medicaid program.

Sincerely,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Jennifer Mitchell, ESS, WV DHHR, [REDACTED] Office

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

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**Claimant,**

v.

**ACTION NO.: 11-BOR-1790**

**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 November 18, 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 (DHHR). This fair hearing was convened at the [REDACTED] County office of the WV DHHR in [REDACTED] with the Hearing Examiner appearing via videoconference from the [REDACTED] County office of the WV DHHR in [REDACTED] on October 6, 2011, on a timely appeal filed August 24, 2011.

**II. PROGRAM PURPOSE:**

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

Jennifer Mitchell, ESS, WV DHHR, [REDACTED] County Office, Department's representative

Presiding at the hearing was Stephen M. Baisden, State Hearings Officer and a member of the State Board of Review.

The Hearings Officer placed participants under oath at the beginning of the hearing.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in denying the Claimant's M-WIN Medicaid benefits based on a disability determination from the WV DHHR Medical Review Team (MRT).

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Chapter 23.11.A and Chapter 11.4.

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

**Department's Exhibits:**

- D-1 ES-RT-3, Disability/Incapacity Evaluation from Medical Review Team dated February 2, 2011
- D-2 ES-RT-3, Disability/Incapacity Evaluation from Medical Review Team dated August 11, 2011
- D-3 Application Denial Letter from WV DHHR to Claimant's spouse dated August 17, 2011
- \*D-4 Submission from WV DHHR, ██████████ County Office to Medical Review Team dated February 1, 2011
- \*D-5 Reevaluation Submission from WV DHHR, ██████████ County Office to Medical Review Team dated July 6, 2011

**Claimant's Exhibits:**

- C-1 Handwritten list of medications prescribed to Claimant

\*Note: Items D-4 and D-5 were sent to Hearings Examiner after the hearing was held, as directed by an Interlocutory Order dated November 2, 2011

**VII. FINDINGS OF FACT:**

- 1) In January, 2011, Claimant came to the WV Department of Health and Human Resources (DHHR), ██████████ County office, in order to apply for the Medicaid Work Incentive (M-WIN) Medical Assistance Program. He subsequently provided medical records and results of a general physical examination. This information was forwarded to the Medical Review Team (MRT) on February 1, 2011. (Exhibit D-4.) On February 28, 2011, the MRT sent a Disability/Incapacity Evaluation form to the ██████████ office

2) Claimant came to the [REDACTED] DHHR Office for a pre-hearing conference, where he and his worker agreed to request a reevaluation of Claimant's submission from the MRT. On July 6, 2011, Claimant's worker submitted additional medical records and a psychological evaluation to the MRT. (Exhibit D-5.) On August 11, 2011, the MRT issued another Disability/Incapacity Evaluation, again reporting that Claimant was not disabled. (Exhibit D-2.) On item IV-E of the Evaluation, an MRT staff member has written, "Deny - [Claimant] has no mental [diagnosis]."

3) West Virginia Income Maintenance Manual §12.2.A states as follows:

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.

4) West Virginia Income Maintenance Manual §23.12.A states as follows:

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.

5) 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.

- 6) The Federal definition of disability is found in 20 CFR §404.1505, which states as follows:

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)

- 7) 20 CFR §404.1508, 404.1509 and 404.1520 of the 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)

- 8) 20 CFR §404.1508, §404.1509, and §404.1520 of the Code of Federal Regulations state:

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)

- 9) The initial submission to the MRT on February 1, 2011 (Exhibit D-4) contains a DFA-RT-5, a physical examination form which was completed on January 25, 2011. Item F-4 of this form states "Duration of inability to work full time:" then asks the completing physician to select among one month, six months, one year or some other duration. The completing physician has placed a check mark at six months.
- 10) The second submission to the MRT on July 6, 2011 (Exhibit D-5) contains a psychological evaluation of Claimant, completed on June 10, 2011 by [REDACTED] of [REDACTED] WV. This evaluation lists no significant psychological diagnoses or emotional difficulties on the part of Claimant.
- 11) Claimant testified that he was not disabled but he took a large number of medications. He submitted a hand-written list of prescriptions that he stated he took daily. (Exhibit C-1.) He testified that if he did not have these medications, he could not work. He stated that he suffers from diabetes and high blood pressure. He did not provide a substantial refutation of the Department's testimony or evidence.

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

- 1) Claimant applied for M-WIN Medicaid in January, 2011. The DHHR Medical Review Team evaluated his application and determined he was not medically disabled.
- 2) Claimant requested a reevaluation of his application and submitted additional documentation, including a psychological evaluation, to the MRT in July, 2011. The MRT evaluated this new documentation and determined Claimant was not psychologically disabled.
- 3) Claimant's initial submission to the MRT contained a document from a physician which specifically stated that his medical disability was expected to last for six months. Claimant's second submission to the MRT contained a psychological evaluation which did not list any significant psychological diagnoses.
- 4) WV DHHR policy states that an M-WIN applicant must meet the disability criteria established by the Social Security Administration. Social Security Administration Policy states that a person is physically disabled if he/she has a significant impairment expected to last for at least a year; and it states that a person is mentally disabled if he/she has psychological abnormalities which can be shown by acceptable clinical diagnostic techniques. A mental impairment must be established by evidence consisting of signs, symptoms and laboratory findings
- 5) The Medical Review Team acted correctly in determining that Claimant did not provide significant medical documentation to establish a medical or psychological disability and therefore the Department acted correctly in denying his application for M-WIN Medicaid.

**IX. DECISION:**

It is the ruling of the State Hearing Officer to **uphold** the decision of the Department to deny the Claimant's M-WIN Medicaid application due to the Medical Review Team's findings that no disability was documented.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18th Day of November, 2011.**

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**Stephen M. Baisden  
State Hearing Officer**