



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

November 7, 2011

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 1, 2011. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your SSI-Related Medicaid based on a finding by the state Medical Review Team that you are no longer disabled.

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 program is 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. 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 (West Virginia Income Maintenance Manual § 12.2 A).

The information submitted at your hearing revealed that you do not have a listed impairment as set forth in policy and do not meet the definition of a disability.

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

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Clara Thomas, Economic Service Worker

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

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

**Claimant,**

**v.**

**ACTION NO.: 11-BOR-1922**

**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 1, 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 August 18, 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 program entitled SSI-Related Medicaid is 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.

**III. PARTICIPANTS:**

-----, Claimant  
Clara Thomas, Economic Service Worker

Presiding at the Hearing was Kristi Logan, 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 Department's proposal to terminate Claimant's SSI-Related Medicaid is correct.

**V. APPLICABLE POLICY:**

WV Income Maintenance Policy Manual § 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 Notice of Decision September 1, 2011
- D-2 Medical Review Team Medical Packet

**VII. FINDINGS OF FACT:**

- 1) Claimant was re-evaluated for medical eligibility for SSI-Related Medicaid in June 2011. Claimant's medical records were submitted to the state Medical Review Team (MRT) for a disability determination. A decision from MRT was received on September 1, 2011 which reads in pertinent part (D-1):

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

No covered disability condition documented. The above does not qualify for MAO-D 1 yr.

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

Deny medical provided was prior to current eval. by Dr. Urick. CT [client] has mild functional limits from anxiety & depressive d/o [disorder] per 5a. Mental impairments do not affect ability to maintain employment

- 2) Claimant testified that she has two (2) hernias, one is vertical and the other is under her ribs. Claimant stated she is unable to lift anything and has an appointment in December 2011 to find out if the hernias are operable. Claimant stated she had surgery on a vein in her leg in July 2011 and needs to have surgery performed on her other leg.

Claimant stated she has Attention Deficit Disorder (ADD) and is a slow learner, having difficulty especially with numbers. Claimant stated her menstrual cycles are very heavy and she needs to have a D & C procedure. Claimant stated her doctor has already ruled out endometriosis.

Claimant stated she last worked in June 2008 and her customary occupation is retail management. Claimant stated her highest level of education is the 10<sup>th</sup> grade in high school.

- 3) Medical records from [REDACTED] Hospital dated June 5, 2006 document the results of an EGD performed by Dr. [REDACTED]. Claimant was diagnosed with gastroesophageal reflux disease with distal esophageal ulcer, hiatal hernia, and chronic gastritis (D-2).
- 4) The DFA-RT-8A completed by Dr. [REDACTED] with [REDACTED] reads in pertinent parts (D-2):

Date of Last Patient Contact: 3/19/10  
Diagnosis: Endometriosis  
Prognosis: Good to excellent  
Employment Limitation: None

- 5) The DFA-RT-15A completed by Dr. [REDACTED] with [REDACTED] reads in pertinent parts (D-2):

Date of Last Patient Contact: 6/23/11  
Diagnosis: Depression d/o NOS, anxiety d/o NOS  
Prognosis: Good  
Length of Time Incapacity/Disability is Expected to Last: n/a  
Employment Limitation: Ability to maintain employment is not affected by mental illness, but it appears that physical issues may affect employment and these should be evaluated separately.

- 6) WV 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 expected to last for a continuous period of not less than 12 months or can be expected to result in death.

- 7) 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 § 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 § 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 dual functional capacity, age, education, and past work experience? (20 CFR § 404.1520f)

- 8) 20 CFR § 404.1508, 404.1509, & 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 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)

- 9) 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) Claimant is not performing substantial gainful activity as defined in 20 CFR § 404.1510.
- 2) Claimant's impairment is not expected to last at least 12 months as required in 20 CFR § 404.1509.
- 3) Medical documentation submitted fails to establish a severe impairment as set forth in 20 CFR § 404.1520. Client does not meet the definition of disability and no longer qualifies for SSI-Related Medicaid.

**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.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 7<sup>th</sup> day of November 2011.**

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**Kristi Logan  
State Hearing Officer**