



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

March 24, 2011

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 8, 2011. Your hearing request was based on the Department of Health and Human Resources' action to terminate your SSI Related Medicaid eligibility effective November 30, 2010.

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 Medicaid Program (SSI-Related) is based on current policy and regulations. One of these regulations specifies 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)]

Information submitted at your hearing fails to demonstrate that you meet the criteria necessary to establish a disability as defined by the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Department in terminating your SSI-Related Medicaid coverage.

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**

-----,

Claimant,

v.

Action Number: 10-BOR-2315

**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 March 24, 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] WV, on March 8, 2011, on a timely appeal filed November 29, 2010. The hearing was originally set for January 14, 2011, but was rescheduled at Claimant's request.

II. PROGRAM PURPOSE:

The program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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

Jennifer Mitchell, Economic Service Supervisor, 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 all 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 terminating the Claimant's Medicaid benefits after a yearly reevaluation by the Medical Review Team (MRT).

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Chapter 1, Sections 22.N and 22.R.
US Code of Federal Regulations Chapter 20, §404.1505 and §404.1521.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Closure letter to Claimant from WV DHHR ██████████ County office, dated November 16, 2010.
- D-2 Disability/Incapacity Decision cover letter, dated November 15, 2010.
- D-3 ES-RT-3, Disability/Incapacity Decision from Medical Review Team, dated November 4, 2011.
- D-4 DFA-RT-2, Medical Review Team Transmittal Memo, dated October 1, 2010.
- D-5 Social Summary, dated August 20, 2010.
- D-6 DFA-RT-5, Physical Examination Form, dated September 16, 2010.
- D-7 DFA-RT-8, Medical Information Request, and DFA-RT-8A, Physician's Summary, dated August 31, 2010.
- D-8 DFA-RT-15, Psychiatrist's Summary, dated August 31, 2010.

VII. FINDINGS OF FACT:

- 1) West Virginia Income Maintenance Manual, Chapter 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.

- 2) Federal Regulations at 20 CFR, §404.1505 read 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 § 404.1520.

(A) Is the person performing substantial gainful activity as defined in 20 CFR §404.1510?

(B) Does a severe impairment exist which is expected to last one year or result in death?

(C) 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?

(D) What is the person's Residual Functional Capacity (20 CFR 404.1545) and can that person still perform his or her former work?

(E) 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)

- 3) Regulations at 20 CFR §404.1521 specifies that in order for an impairment to be considered severe, it must significantly limit a person's ability to perform basic work activities.
- 4) On August 20, 2010, Claimant came to the WV Department of Health and Human Resources (DHHR), ██████████ County office, in order to reapply for SSI-Related Medical Assistance. He and a worker in the Income Maintenance Unit completed a Social Summary. (Exhibit D-5.)
- 5) On August 31, 2010, the MRT sent a letter to Claimant requesting that he and his primary care physician complete a physical examination and send to the MRT a copy of Claimant's medical records. Claimant completed a physical examination with his primary care physician, who sent the results, along with Claimant's medical records, to the ██████████ DHHR office on September 16, 2010. (Exhibits D-6 and D-7.) Also on August 31, 2010, the MRT requested medical information from Claimant's psychiatric care facility, Psychiatric ██████████ WV. ██████████ returned the information request along with attached psychiatric treatment documentation to the ██████████ DHHR office on September 7, 2010. (Exhibit D-8.) On October 1, 2010, the results of the physical examination from Claimant's primary care physician, the primary care physician's medical records, the documentation from Claimant's psychiatric care facility, and Claimant's social summary were sent to the MRT. (Exhibit D-4.)
- 6) On November 9, 2010, the ██████████ DHHR office received a form ES-RT-3, a Disability/Incapacity Evaluation from the MRT. (Exhibit D-3.) The Evaluation indicated that Claimant did not have an impairment or combination of impairments that significantly limited his ability to perform a basic work activity. The section of the form labeled "Remarks" states, "Examination report of 9/16/10 shows no evidence of a one year physical disability." On November 14, 2010, a worker from the ██████████ County office of the DHHR mailed to Claimant a copy of the decision along with a Medicaid closure letter. (Exhibit D-1.)
- 7) On the General Physical form completed by Claimant and his primary care physician on September 16, 2010 (Exhibit D-6), Section E is labeled, "Diagnosis." Claimant's physician has listed nothing under "Major" and "Hypertension" and "Kidney Stones"

under “Minor.” Section F is labeled, “Applicant’s ability to work full-time.” Item #1 of this section asks, “Is applicant able to work full-time at customary occupation or like work?” The physician has written, “Pt is able to work.” Section I is labeled, “Summary of Conclusions.” At this section, the physician has written, “Pt currently is not working and he will be a good candidate for vocational rehabilitation.”

- 8) On the Medical Information Request form completed by Claimant’s psychiatric care facility, (Exhibit D-8) the psychiatrist who completed the report submitted copies of progress notes for the examination dates of January 15, 2010, March 12, 2010 and May 10, 2010. On the earliest of these progress notes, the psychiatrist has indicated a diagnosis depression and anxiety. On the subsequent two progress notes, he has indicated that the depression and anxiety have lessened. The psychiatrist does not indicate that Claimant’s depression and anxiety affect his ability to work.
- 9) Claimant testified that he needed Medicaid coverage because he had numerous medical problems including diabetes, kidney stones and a bad back, depression and anxiety. He added that he did not have any means to pay for his diabetic treatment without his medical card. Claimant did not testify to the extent to which his medical or emotional problems affected his ability to work. He did not provide a substantial rebuttal to the Department’s evidence.

VIII. CONCLUSIONS OF LAW

- 1) Regulations provide that 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. Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
- 2) The MRT follows the Social Security Administration regulations to determine if an individual is disabled or incapacitated. The Code establishes a five-part set of questions in order to make this determination.
- 3) The first question the regulations require to be answered asks, “Is the person performing substantial gainful activity?” Claimant is not working, so he meets this part of the criteria.
- 4) The second question the regulations require is, “Does a severe impairment exist which is expected to last one year or result in death?” The Physical Evaluation form submitted by Claimant’s physician provides a diagnosis of hypertension and kidney stones, and documentation from Claimant’s psychiatric care facility gives diagnoses of depression and anxiety. However, medical documentation does not support a finding that these impairments significantly limit Claimant’s ability to perform basic work activities. Thus, Claimant does not have a medically established severe impairment.

- 5) The Medical Review Team acted correctly in determining that Claimant was not disabled or incapacitated.

IX. DECISION:

It is the ruling of the State Hearing Officer to **uphold** the decision of the Department to terminate the Claimant's SSI-Related Medicaid coverage.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 24th Day of March, 2011.

**Stephen M. Baisden
State Hearing Officer**