



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

June 8, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 24, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate SSI-Related Medicaid based on a disability determination by the state 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 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 no longer meet the medical criteria to continue receiving SSI-Related Medicaid.

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

Sincerely,

Kristi Logan
State Hearing 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.: 12-BOR-1055

**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 ----- held on May 24, 2012. 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 March 30, 2012.

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.

This hearing was held by videoconference.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Department's decision to terminate Claimant's SSI-Related Medicaid was 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 Termination Letter dated March 28, 2012
- D-2 WV Income Maintenance Manual § 12.1 A and B, 12.11, and 16.6 A and B
- D-3 Medical Review Team Packet

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for SSI-Related Medicaid. Medical reports were sent to the state Medical Review Team (MRT) in January 2012 for a disability determination. MRT's decision was issued in February 2012 which reads in pertinent part (D-3):

After considering all information a decision has been made that the above client is not mentally disabled.

Deny – Ct. [client] is dxed [diagnosed] MDD [major depressive disorder] in remission. Functional limits would not prevent work activity.

- 2) Claimant testified that she has neuropathy, migraines, problems sleeping, degenerative disc disease, anxiety, depression, an overactive bladder and high cholesterol. Claimant stated she was recently told by her gynecologist that she had an enlarged uterus that may require surgery.

Claimant stated she last worked in 2007, in home health care. Claimant stated she quit due to the stress of the job, back pain, migraines and the long commute to work. Claimant completed the eighth grade and has a GED. She is currently appealing her Social Security Disability denial.

- 3) A general physical completed by --, NPC on November 3, 2011, was submitted to MRT as part of the reevaluation process. Pertinent parts of the physical document (D-3):

Diagnosis: Major – Peripheral neuropathy, horseshoe kidney disease
Minor – Hyperlipidemia, migraines

Is applicant able to work full-time at customary occupation or like work:
Yes, housewife – but limited

Is applicant able to perform other full-time work: No

What work situations, if any, should be avoided: Long periods where she can't go to bathroom or move around, long periods of sitting, standing

Duration of inability to work full-time: Unknown

- 4) Progress notes from Claimant's treating psychiatrist, -----, MD dated December 16, 2011, reads in pertinent part (D-3):

The patient presents today for medication management. The patient reports that she is doing "okay" and denies any significant depression at this time. She prefers to stay off Celexa.

The patient is AOX4, exhibits good dress/grooming/hygiene, has good eye contact and no psychomotor abnormality. Thoughts are goal-directed, and there is no evidence of delusional content. Attention, concentration, and impulse control are intact, and sensorium is clear. Cognition appears intact. The patient denies lethal ideation. Insight is partial. Judgment is good.

Assessment:

Major Depressive Disorder, Recurrent, in remission

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

- 6) 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 § 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)

7) 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 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)

8) 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) There is no documentation that Claimant's impairments are expected to last at least 12 months as required in 20 CFR § 404.1509. Claimant's nurse practitioner cited the length of her inability to maintain full time employment as "unknown".

- 3) The medical records submitted fails to establish Claimant's impairments prevent her from performing basic work activities. Claimant's psychiatrist indicated her major depression is in remission without the use of medications. Claimant does not meet severe impairment requirement found in 20 CFR § 404.1520.
- 4) Claimant no longer meets the medical criteria required to continue receiving SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision 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 8th day of June 2012

Kristi Logan
State Hearing Officer