



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

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

June 22, 2012

1432 Harvey Road
Huntington, WV 25701

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 29, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of SSI-Related Medicaid.

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. One of these regulations specifies that in order to be considered disabled, an individual over age 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. (West Virginia Income Maintenance Manual, Chapter 12.2.A.1)

The information that was submitted at your hearing revealed that you no longer meet the medical eligibility requirements to establish disability for SSI-Related Medicaid.

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

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Janie Driggs, Department Representative

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1094

**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 June 22, 2012, for -----. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This Fair Hearing was convened on May 29, 2012, on a timely appeal, filed April 4, 2012.

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
Janie Driggs, Department Representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not the Claimant meets the medical eligibility criteria necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 12.2.A.1
Code of Federal Regulations, 20 CFR §404.1505; §404.1509; §404.1520

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Application for Adult Medicaid
- D-2 List of medical information requests
- D-3 Termination notice dated March 23, 2012
- D-4 Denial memoranda from Medical Review Team (MRT)
- D-5 Hearing request
- D-6 Scheduling order
- D-7 MRT Transmittal Memorandum; Social Summary Outline
- D-8 Information previously submitted to MRT
- D-9 Medical Information Request; Physician's Summary from Dr. -----; Medical records
- D-10 Medical Information Request; Incomplete Physician's Summary; Medical records
- D-11 Incomplete Psychiatrist's Summary; Psychiatric/Psychological records
- D-12 Physician's Summary from Dr. -----
- D-13 Medical Information Request; Incomplete Physician's Summary
- D-14 Request for a Report from Hospital Records

VII. FINDINGS OF FACT:

- 1) Janie Driggs, Representative for the Department, testified that she initiated a reevaluation of the Claimant's eligibility for SSI-Related Medicaid in February 2012. Medical and psychiatric reports (Exhibits D-9, D-10, D-11, D-12, D-13, and D-14) regarding the Claimant were gathered and forwarded to the Department's Medical Review Team (MRT). The MRT responded to Ms. Driggs regarding the medical documentation of the Claimant via a Mental Disability/Incapacity Evaluation (DFA-RT-3M) form (Exhibit D-4, pp. 1 – 2 of 4) dated March 20, 2012, stating as follows in pertinent part:

deny ct [client] is dxed [diagnosed] opioid dependence alcohol dependence cocaine dependence cannabis dependence substance disorders do not meet disability criteria [sic]

In the section above, the Review Team Examiner noted that the Claimant did not have a medically determinable impairment or combination of impairments which significantly limits the ability to perform basic work activity. The MRT additionally provided a Disability/Incapacity Evaluation (ES-RT-3) form (Exhibit D-4, pp. 3 – 4 of 4) dated March 7, 2012, stating as follows, in pertinent part:

No physical disabilities noted. The above does not qualify for MAO-D/M-WIN.

Also in this section, the Review Team Examiner noted that the Claimant did not have a medically determinable impairment or combination of impairments which significantly limits the ability to perform basic work activity. Both sections noted that the Claimant was not performing substantial gainful activity.

- 2) The Department notified the Claimant of the MRT decision (Exhibit D-3) in writing on March 23, 2012, stating as follows in pertinent part:

1. ACTION: Your SSI Related Medicaid for the Aged, Blind and Disabled benefits will stop. You will not receive this benefit after MARCH 2012.

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

- 3) The Code of Federal Regulations, 20 CFR §404.1505 provides the following definition of disability:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

- 4) The West Virginia Income Maintenance Manual, Chapter 12.2.A.1, defines disability for individuals age eighteen (18) or over as follows:

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.

- 5) The Code of Federal Regulations, 20 CFR §404.1520, outlines a five-step process for evaluating disability (emphasis added):

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (See paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (See paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). **If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled.** (See paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration

requirement, we will find that you are disabled. (See paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and §404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and §404.1560(c.) (emphasis added)

- 6) A physician's summary (Exhibit D-9) from Dr. ----- noted the Claimant has a diagnosis of Hepatitis C and that his incapacity or disability is expected to last three months.
- 7) A psychiatrist's summary (Exhibit D-12) from Dr. ----- noted the employment limitation of the Claimant as "short term inability to lift [twenty pounds] for 2 weeks."
- 8) Ms. Driggs testified that another request for medical records (Exhibit D-14) was not returned.
- 9) The Department requested a psychiatrist's summary and medical records (Exhibit D-11) from ----- . The psychiatrist's summary form was not completed. Included in the records returned were documents titled ----- . The most recent of these documents was dated December 14, 2011, and listed diagnoses of Opioid Dependence, Cannabis Dependence, and Cocaine Dependence. Nothing in the document referred directly to employment limitations or a duration of incapacity or disability; however, the "Level of Functioning" section noted "Limited Impairment" for school or work.
- 10) The Code of Federal Regulations, 20 CFR §404.1509 explains the *duration* requirement of step two of the five-step process as:

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 the duration requirement.

- 11) The Claimant testified that nothing has changed in his condition since he was approved for SSI-Related Medicaid, and as a result does not understand the Department's termination of benefits.

VIII. CONCLUSIONS OF LAW:

- 1) There is no dispute of the finding of the Department's MRT that the Claimant is not performing substantial gainful activity. The Claimant cannot be eliminated from the five-step process for establishing disability at step one.

- 2) The second step of the five-step process requires thresholds to be met in both severity and duration. The Claimant's mental health services provider did not complete a psychiatrist's summary. Diagnoses for the Claimant could be determined from these records, but not an expected duration of incapacity or disability from those diagnoses. Physician summaries of the Claimant listed expected durations of no more than three months for incapacity or disability. The Claimant failed to meet the duration requirement, and disability could not be established. The Department was correct to terminate SSI-Related Medicaid on this basis.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's termination of SSI-Related Medicaid based on a finding that the Claimant was not disabled.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of June, 2012.

**Todd Thornton
State Hearing Officer**