



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

Board of Review
2699 Park Avenue, Suite 100
Huntington, West Virginia 25704

Rocco S. Fucillo
Cabinet Secretary

August 10, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held August 7, 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
Cory Collins, Department Representative

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1335

**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 August 10, 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 August 7, 2012, on a timely appeal, filed May 25, 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
Cory Collins, 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 West Virginia Income Maintenance Manual, Chapter 12.2.A.1
- D-2 Denial letter dated April 27, 2012 and Mental Disability/Incapacity Evaluation form
- D-3 Disability/Incapacity Evaluation form

VII. FINDINGS OF FACT:

- 1) Cory Collins, representative for the West Virginia Department of Health and Human Resources (Department), testified that the Department's Medical Review Team (MRT) completed a re-evaluation of Claimant's eligibility for SSI-Related Medicaid. MRT forwarded the findings of their physical (Exhibit D-3) and mental (Exhibit D-2, pp. 2 – 3) evaluations to a Department worker that issued a cover letter advising the Claimant that her SSI-Related Medicaid benefits would be terminated (Exhibit D-2, p. 1).
- 2) On the Mental Disability/Incapacity Evaluation form (Exhibit D-2, pp. 2 – 3) the MRT reviewer noted that the Claimant was not currently performing substantial gainful activity, but that she did not have a medically determinable impairment or combination of impairments which significantly limited her ability to perform basic work activity. The comments from the MRT reviewer are as follows:

deny ct [client] is dxed [diagnosed] Pain D/O [disorder] Alcohol Dep [dependence] in remission. Functional limits are mild and would not limit work activity [sic]

On the Disability/Incapacity Evaluation form (Exhibit D-3) the MRT reviewer also noted that the Claimant was not performing substantial gainful activity, but that she did not have a medically determinable impairment or combination of impairments which significantly limited her ability to perform basic work activity. The comments from the MRT reviewer are as follows:

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

- 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:

(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) The Claimant testified that she did not feel that her doctor cooperated with the MRT re-evaluation process. She did not specify any impairments.

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 the identification of a severe impairment. Neither the MRT reviewers nor the Claimant identified any such impairment. The Claimant must be eliminated from disability consideration at step two, and 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 August, 2012.

Todd Thornton
State Hearing Officer