



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General

Earl Ray Tomblin
Governor

Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Rocco S. Fucillo
Cabinet Secretary

September 13, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held September 11, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of SSI-Related Medicaid based on a disability determination by the 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 state 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 continue to meet the medical requirements for SSI-Related Medicaid.

It is the decision of the State Hearing Officer to **reverse** 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
Jessica Shumake, Economic Service Worker

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1447

**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 September 11, 2012. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources' Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed June 8, 2012.

II. PROGRAM PURPOSE:

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
Jessica Shumake, 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 termination of 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 Case Comments from eRAPIDS Computer System
- D-2 Medical Review Team Packet submitted April 2012
- D-3 Medical Review Team Packet submitted December 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the SSI-Related Medicaid program. Medical reports were sent to the Medical Review Team (MRT) in April 2012, for a disability determination. MRT issued a decision on April 26, 2012, which reads in pertinent part (D-2):

After considering all information a decision has been made that the above client is not: Disabled – SSI-Related Medicaid 18/Over

No conditions noted that would be disabling. The above does not qualify for MAO-D [Medicaid based on disability].

- 2) Claimant testified he has deep vein thrombosis (DVP) and a meniscus tear in his left knee. His medications consist of pain killers and blood thinners. Claimant's customary occupation was a carpenter and a roofer, but he has been unable to work for the last 3-4 years. Claimant has a General Education Degree (GED).

Claimant stated he has pain and swelling in his leg due to multiple blood clots and needs to have surgery on the meniscus tear. His doctor has advised against surgery at this time due to the DVP. Claimant stated he has trouble walking and cannot squat or kneel. Claimant stated his condition has not changed in the past year.

- 3) The report of a physical examination by -----, MD, on January 9, 2012, documents in pertinent parts (D-2):

Diagnosis – Major: chronic left knee pain
Minor: DVT

Is applicant able to work full-time at customary occupation or like work?

No

Is applicant able to perform other full-time work? Same as above

What work situations, if any, should be avoided? Prolong standing [*sic*]

Duration of inability to work full-time: 2 months

- 4) The physician's summary from Claimant's treating practitioner, -----, MD documents in pertinent part (D-2):

Date of last patient contact: 12/1/11

Diagnosis: DVT/Internal derangement of L[eft] knee

Prognosis: Fair

Length of time incapacity/disability is expected to last: 1 year

Employment limitations: No squatting, lifting > 20lbs.

- 5) The findings of a Doppler ultrasound evaluation completed on December 2, 2011 at ----- Regional Medical Center document in pertinent part (D-2):

Findings: There is again noted thrombus formation at the left femoral vein as seen previously. The left common femoral vein appears to be essentially patent with good compressibility and augmentation response. The left popliteal vein also appears to be essentially patent. The greater saphenous vein is unremarkable.

Conclusion: DVT involving the left femoral vein with no significant flow through this vessel.

- 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 is 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 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)

- 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 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)

- 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 expected to last at least 12 months, as documented in the physician's summary completed by -----, pursuant to 20 CFR § 404.1509.

- 3) Medical records from Claimant's treating physician, -----, document a severe impairment that prohibits Claimant from performing substantial work activity. The physical exam from ----- also documents Claimant's inability to work in his customary occupation or perform other full-time work activities. Claimant meets the severe impairment requirement as found in 20 CFR § 404, Sub Part P, App. 1.
- 4) Claimant continues to meet the medical criteria for SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 13th day of September 2012

**Kristi Logan
State Hearing Officer**