



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

September 21, 2012

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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' action to terminate your Medicaid Work Incentive (M-WIN) benefits based on failure to meet disability criteria.

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 M-WIN Program is based on current policy and regulations. One of these regulations specifies that in order to be eligible for M-WIN, an individual must meet disability criteria established by the Social Security Administration. If a person is determined to be no longer disabled, he is evaluated automatically as Medically-Improved for the M-WIN Program. [West Virginia Income Maintenance Manual Section 23.12]

Information submitted at your hearing reveals that the Department failed to provide adequate justification for its determination that you are no longer disabled, or its decision that you are ineligible to receive M-WIN Medically-Improved benefits.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your M-WIN benefits. The case is **remanded** to the Medical Review Team for a complete evaluation of medically-improved eligibility and a thorough explanation if that criterion is not met. Should the eligibility determination be unfavorable, you may file an appeal anew.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Nina Orndorff, WVDHHR

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

**IN RE:** -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-1835**

**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 ----- . 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 via telephone on September 11, 2012, on a timely appeal filed July 24, 2012.

**II. PROGRAM PURPOSE:**

The Medicaid Work Incentive (M-WIN) coverage group was established by West Virginia Legislation to assist individuals with disabilities in becoming independent of public assistance by enabling them to enter the workforce without losing essential medical care. To be eligible, a person must be disabled according to the Social Security Administration definition and must be engaged in competitive employment. Participants pay an enrollment fee and a monthly premium.

**III. PARTICIPANTS:**

-----, Claimant  
---- -----, Economic Service Worker, WVDHHR  
---- -----, Economic Service Worker, WVDHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the Agency was correct in its action to terminate M-WIN benefits based on failure to meet disability or medically-improved criteria.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Sections 12.2(A), 23.4 and 23.12  
20 Code of Federal Regulations Sections 404.1505, 404.1508, 404.1509 and 404.1520

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Notice of Decision dated July 18, 2012, and WVDHHR Disability/Incapacity Evaluation
- D-2 Notice of Decision dated July 19, 2012
- D-3 WVDHHR Medical Review Team Transmittal Memorandum, Social Summary Outline, General Physical Reports dated April 20, 2012, and March 24, 2011
- D-4 West Virginia Income Maintenance Manual Section 23.2
- D-5 West Virginia Income Maintenance Manual Section 12.2

**VII. FINDINGS OF FACT:**

- 1) The Claimant is a recipient of Medicaid Work Incentive (M-WIN) benefits and was reevaluated by the West Virginia Department of Health and Human Resources, hereinafter WVDHHR, Medical Review Team (MRT) in June 2012 to determine her continued eligibility for the program.
- 2) The Claimant underwent a general physical examination (DFA-RT-5) on April 20, 2012, the results of which were forwarded to the MRT on June 11, 2012 (see Exhibit D-3). Documentation sent to MRT also included a Social Summary, which indicates that the Claimant has been employed since 2008 to the present at ---.
- 3) The MRT returned a decision (D-1) to the WVDHHR, ----- County Office, on or about June 28, 2012, indicating that the Claimant is not physically disabled for the purposes of SSI-Related Medicaid- 18/Over, M-WIN- 18/Over, or M-WIN Medically-Improved- 18/Over. Exhibit D- 1 states: "DFA-RT-5 of 5/24/12 states 'yes'- is able to work full-time. The above does not qualify for MAO-D/M-WIN."
- 4) The Department sent the Claimant Notices of Decision on July 18, 2012 (D-1), and July 19, 2012 (D-2), informing her of the MRT decision and the termination of her M-WIN benefits.
- 5) The Claimant, who is 52 years old, is employed as a clerical office worker in the oil and gas industry, and has a diagnosis of myasthenia gravis. She stated that she can presently work full-time because she has been able to purchase medications to stabilize her condition. Without

medication, the Claimant stated that she experiences double vision, cannot swallow, and has impaired speech. The Claimant testified that her condition has not changed since she was approved for the M-WIN Program.

- 6) It should be noted that information on both the Claimant's 2011 and 2012 General Physical Examination Reports (D-3) includes a major diagnosis of myasthenia gravis. Both reports indicate that the Claimant is able to work, but should not work more than 40 hours per week. Both reports state that the Claimant needs to continue with chronic management of her condition.
- 7) West Virginia Income Maintenance Manual Section 23.12 states:

### **23.12 DETERMINING DISABILITY, INCAPACITY AND BLINDNESS**

#### **A. DETERMINING DISABILITY**

The M-WIN applicant/recipient must meet the disability criteria established by the Social Security Administration. If the individual does not receive RSDI based on disability, disability must be established by MRT. See Chapter 12 for MRT procedures and requirements for both adults and children.

#### **B. DETERMINING ELIGIBILITY FOR A MEDICALLY-IMPROVED DISABILITY**

**NOTE:** When the information is submitted to MRT for the reevaluation of disability, an evaluation for Medically-Improved eligibility must be requested at the same time. If the individual is determined no longer disabled, he is evaluated automatically as Medically-Improved.

Eligibility for this group of individuals is determined by MRT. These are individuals who no longer meet the RSDI or SSI-Related disability definition due to a medical improvement brought about by treatments such as therapy or medication. Examples of potentially eligible individuals are those with severe mental illness, HIV/AIDS and epilepsy. See Section 23.4, D for other specific requirements.

- 8) West Virginia Income Maintenance Manual Section 12.2(A) (D-5) 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 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.

- 9) West Virginia Income Maintenance Manual Section 23.4, C states, in pertinent part:

The Department cannot determine that an individual who participates in the program is no longer disabled solely due to his employment or earned income, including self-employment; therefore, at the time of the 6-month redetermination, the Worker must insure that the disability requirement continues to be met for the new period of eligibility. The individual must be a current RSDI recipient or there must be a valid MRT decision which extends into the new eligibility period. MRT reevaluations will be completed at the time specified by MRT.

- 10) West Virginia Income Maintenance Manual Section 23.4, E includes the following information:

**E. IMPROVEMENT IN MEDICAL CONDITION -  
MEDICALLY-IMPROVED GROUP**

**NOTE:** Only individuals who originally received benefits under the M-WIN coverage group may receive this coverage as medically-improved. The medical determination is made by MRT. An M-WIN recipient who experiences an improvement in his medical condition remains eligible for coverage if he:

- Meets all other program eligibility requirements.

## **VIII. CONCLUSIONS OF LAW**

- 1) Policy states that an M-WIN applicant/recipient must meet the disability criteria established by the Social Security Administration. If the individual does not receive RSDI based on disability, disability must be established by MRT. When information is submitted to the MRT for the reevaluation of disability, an evaluation for M-WIN Medically-Improved must be requested at the same time. If the individual is determined no longer disabled, he is evaluated automatically for M-WIN Medically-Improved benefits. These are individuals who no longer meet the RSDI or SSI-Related disability definition due to a medical improvement brought about by treatments such as therapy or medication.
- 2) The Claimant is a recipient of M-WIN benefits and has a diagnosis of myasthenia gravis. She testified that she is currently employed and her condition has not improved: it has merely been stabilized with medication.

- 3) The MRT failed to address why the Claimant's current condition does not qualify as medically-improved for the M-WIN Program. Therefore, evidence fails to support the Department's position that the Claimant is no longer eligible for M-WIN benefits.

**IX. DECISION:**

It is the ruling of the State Hearing Officer to **reverse** the action of the Department to terminate the Claimant's benefits under the M-WIN Program. The case is **remanded** to the Department for reevaluation by the Medical Review Team under the M-WIN Medically Improved- 18/Over category. Should the MRT find the Claimant no longer eligible for M-WIN benefits, a thorough explanation must be provided concerning the Claimant's failure to meet medically-improved criterion, and the Claimant may file an appeal anew. The case will revert to the status that existed prior to the notice of adverse action.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 21st Day of September 2012.**

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**Pamela L. Hinzman  
State Hearing Officer**