



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

October 25, 2012

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Dear -----,

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held October 18, 2012. Your hearing request was based on the Department of Health and Human Resources' determination that you do not meet the medical eligibility requirements for the SSI-Related Medicaid program.

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 in order to be considered disabled, an individual over 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. [WV Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for the SSI-Related Medicaid program.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your medical eligibility for SSI-Related Medicaid benefits.

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young-Chairman, Board of Review  
Peter VanKleek-Economic Service Supervisor

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-2047**

**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 convened on October 18, 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 convened on a timely appeal, filed August 24, 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  
-----, Claimant's witness  
Peter VanKleek, Economic Service Supervisor, DHHR

Presiding at the hearing was Eric L. Phillips, 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 Claimant meets the medical eligibility requirements necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid program.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 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 Hearing Summary
- D-2 Medical Review Team Transmittal Memorandum
- D-3 Medical Review Team Social Summary Outline
- D-4 Medical Review Team General Physical
- D-5 Medical Review Team Disability/Incapacity Evaluation
- D-6 Additional Medical Request
- D-7 Medical Review Team Transmittal Memorandum
- D-8 Psychological Evaluation
- D-9 Medical Review Team Disability/Incapacity Evaluation
- D-10 Notice of Decision dated June 26, 2012
- D-11 West Virginia Income Maintenance Manual § 12.11

**Claimant's Exhibits:**

- C-1 Letter from -----, D.O.
- C-2 Prescription Pad Note from -----, D.O.

**VII. FINDINGS OF FACT:**

- 1) In January 2012, the Claimant completed an application for SSI-Related Medicaid benefits. The Department submitted a General Physical (Exhibit D-4) and Social Summary Outline (Exhibit D-3) to the Medical Review Team (MRT) to determine if the Claimant met the disability requirements under program guidelines.
- 2) The Claimant's Social Summary (Exhibit D-3) documents rheumatoid arthritis which affects her neck, hip, knees and feet with an inability to lift as her primary medical conditions.
- 3) The Claimant was administered a General Physical (Exhibit D-4) as part of the MRT determination process. This exhibit documents the Claimant's diagnoses of Ankylosing Spondylitis, insomnia, pain and fatigue. The physician noted in the exhibit that the Claimant was unable to work in her customary occupation, but noted it was unknown if the Claimant could perform other full-time work. Additionally, the physician noted that the Claimant should be evaluated by rehabilitation in order to determine the duration of her inability to work full-time.

- 4) On February 16, 2012, MRT issued the Department a decision (Exhibit D-5) in response to the information submitted with the Claimant's application for benefits. This exhibit documents that the MRT determined that the Claimant was not physically disabled. Section IV. B of the exhibit documents that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limits her ability to perform basic work activity. Section IV. E of the exhibit documents that the Claimant did not present physical disabilities which prevent performance of other work considering age, education, work experience or residual functional capacity.
- 5) On March 6, 2012, MRT requested that the Claimant complete a psychological evaluation (Exhibit D-6) in order to determine any mental incapacity. The Claimant completed the evaluation (Exhibit D-8) with -----, M.S. on April 5, 2012, and the information was submitted for MRT review on April 10, 2012 (Exhibit D-7). Dr. ----- diagnosed the Claimant with cocaine dependence (early full remission), mood disorder (NOS), arthritis and left nerve damage (per Claimant report). Dr. ----- opined in the report that the Claimant would benefit from supportive mental health counseling in order to maintain her drug-free status and maintain a new lifestyle.
- 6) On June 14, 2012, MRT issued the Department a decision (Exhibit D-9) in response to the psychological evaluation which indicated that the Claimant was not mentally disabled. Section IV. B of the exhibit documents that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limits her ability to perform basic work activity. Section IV. E of the exhibit documents in pertinent part:

Deny. Ct. [client] is dxed [diagnosed] cocaine dependence in remission. Mood d/o [disorder] NOS [not otherwise specified]. Ct. exhibits mild to moderate functional limits which would not prevent work activity.
- 7) On June 26, 2012, the Department issued a Notice of Decision (Exhibit D-10) to the Claimant indicating that her application for Medicaid assistance had been denied effective June 19, 2012, due in part to the reasons outlined in the MRT's decision dated June 14, 2012 (Exhibit D-9).
- 8) The Claimant acknowledged a physical disability as the basis of her appeal. She indicated that she was previously diagnosed with Ankylosing Spondylitis, approximately five years ago, which continues to present day. The Claimant testified that her condition has deteriorated due to her own neglect. She indicated that she is unable to work a full day of employment due to difficulties standing and sitting. The Claimant also related emotional problems due to her past. The Claimant indicated that the physician who administered the general physical (Exhibit D-4) did not administer any tests and took her statements regarding her condition. She indicated that she has obtained a regular physician which would like to administer different examinations due to her Rheumatoid factor (Exhibit C-1, C-2) and has referred the Claimant to a rheumatologist for further evaluations.

9) West Virginia Income Maintenance Manual § 12.2 (A):

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.

10) 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 Part 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 residual functional capacity, age, education, and past work experience (20 CFR § 404.1520f)

11) 20 CFR§ 40-4.1509, & 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).

12) 20 CFR § 404.1508, 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)

13) 20 CFR § 404.1521 Code of Federal Regulations:

(a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.

(b) Basic work activities. When we talk about basic work activities we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting

### **VIII. CONCLUSIONS OF LAW:**

- 1) Regulations that govern the SSI-Related Medicaid Program require that an eligible individual must have a severe impairment(s) and meet the duration requirement in order for there to be a disability finding. This is interpreted to mean that unless the disability 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. Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
- 2) The evidence fails to support that the Claimant presents a severe impairment. While the Claimant indicates that she is not currently engaging in a substantial gainful activity, information submitted to the MRT failed to establish the duration of her inability to work full-time or her ability to perform other work. Additionally, the Claimant's psychological evaluation did not reveal any serious long-term problems which would demonstrate a mental incapacity. Therefore, the medical evidence submitted to the MRT failed to establish a severe impairment and the Department's decision to deny the Claimant's application for Medicaid assistance is affirmed.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the decision of the Department to deny the Claimant's application for SSI-Related Medicaid assistance.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of October 2012.**

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**Eric L. Phillips**  
**State Hearing Officer**