



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

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 no longer 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 terminate 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
Ann Hubbard-Economic Service Supervisor

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

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1248

**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 Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing convened on October 18, 2012, on a timely appeal, filed August 23, 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
Ann Hubbard, 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 § 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 Computer printout of case comments dated February 2012 through August 2012
- D-2 Notice of Decision dated August 7, 2012
- D-3 West Virginia Income Maintenance Manual § 12.2
- D-4a Medical Review Team decision dated July 11, 2012
- D-4b Medical Review Team decision dated April 18, 2012
- D-5 Information submitted to the Medical Review Team

VII. FINDINGS OF FACT:

- 1) In March 2012, the Claimant completed a redetermination in order to maintain his medical eligibility for the SSI-Related Medicaid program. Along with the previous determination of disability, the Department submitted the Claimant's updated information, including a Social Summary and General Physical (Exhibit D-5), to the Medical Review Team (MRT) to determine if the Claimant continued to meet the disability requirements under program guidelines.
- 2) The Claimant's updated Social Summary (Exhibit D-5) documents "hepatitis c, memory loss, back issues, surgery on left foot, severe depression, anxiety and moderate COPD" as the Claimant's primary medical conditions.
- 3) The Claimant was administered a physical examination (Exhibit D-5) as part of the MRT determination process. This exhibit documents the Claimant's diagnoses as "lumbar radicalopathy, chronic foot pain, and hepatitis c." During the examination, the Claimant described his pain as "constant chronic lower back pain, scale 6/10 with occasional radiation increased pain with sitting too long, bending, lifting, take ultram." Additionally, the physician noted that the Claimant was "unable to work full-time at his customary occupation, but was able to perform other sedentary full-time work."
- 4) On April 18, 2012, MRT issued the Department a decision (Exhibit D-4b) in response to the information submitted with the Claimant's recertification 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 his ability to perform basic work

- 5) On or around May 22, 2012, MRT requested that the Claimant complete a psychological evaluation (Exhibit D-1) in order to determine any mental incapacity. The Claimant completed the evaluation with -----, M.S. on July 3, 2012, and the information was submitted for MRT review on July 9, 2012 (Exhibit D-1). Dr. ----- diagnosed the Claimant with depressive disorder, personality disorder and hepatitis c (per Claimant's report). Dr. ----- documented that the Claimant would benefit from counseling services, but indicated a poor prognosis due to the Claimant's history of non-compliance. Furthermore, this exhibit documents that "overall the [Claimant's] profile does not indicate the presence of any serious long-term psychological problem."
- 6) On July 11, 2012, MRT issued the Department a decision (Exhibit D-4a) 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 his ability to perform basic work activity. Section IV. E of the exhibit documents in pertinent part:

Deny. Client is dxed [diagnosed] depressive d/o [disorder] NOS [not otherwise specified]. Personality d/o NOS. He exhibits mild-moderate limits which would not prevent work activity.
- 7) On August 7, 2012, the Department issued a Notice of Decision (Exhibit D-2) to the Claimant indicating that his Medicaid recertification had been denied effective July 27, 2012, due in part to the reasons outlined in the MRT's decision dated July 11, 2012 (Exhibit D-4a)
- 8) The Claimant acknowledged a physical disability as the basis of his appeal. He indicated that he has been diagnosed with hepatitis c, but has not sought treatment for this illness. He contends that he meets the Medicaid requirements because if left untreated, his hepatitis c can lead to death. He indicated that he is experiencing higher viral loads associated with his diagnosis and will need to seek treatment in the future. He indicated that due to his illness, he has not held employment since 2009, when he last participated in odd jobs. The Claimant indicated that he experiences lower lumbar back pain with three "messed up" discs and has had five prior surgeries on the "big toe" on his left foot. He indicated that his condition associated with his back pain has deteriorated over the years which results in difficulty walking, sitting, standing and bending. Additionally, the Claimant related no mental disabilities other than depression and problems with short-term memory.
- 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 he is not currently engaging in a substantial gainful activity, information submitted to the MRT revealed that the Claimant's condition would allow him to participate in other sedentary full-time employment. 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 terminate the Claimant's Medical assistance is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's 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.

Eric L. Phillips
State Hearing Officer