



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Michael J. Lewis, M.D., Ph.D.  
Cabinet Secretary

February 23, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held January 20, 2012. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your Medicaid Work Incentive Program benefits due to a disability determination by the state 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 Medicaid Work Incentive Program (M-WIN) is based on current policy and regulations. These regulations provide 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 definition of disability.

It is the decision of the State Hearing Officer to **Reverse** the action of the Department to terminate your M-WIN coverage.

Sincerely,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Clara Thomas, Economic Service Worker

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

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

**Claimant**

**v.**

**ACTION NO.: 11-BOR-2507**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**Respondents**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 20, 2012 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 on a timely appeal, filed December 5, 2011.

**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  
Clara Thomas, Economic Service Worker

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the Board of Review.

This hearing was held by videoconference.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department's decision to terminate Claimant's M-WIN was correct.

**V. APPLICABLE POLICY:**

WV Income Maintenance Policy Manual § 12.2 A and 23.12  
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 Denial Letter dated November 7, 2011
- D-2 WV Income Maintenance Manual § 12.2, 12.3 and 16.9
- D-3 Medical Review Team Packets

**VII. FINDINGS OF FACT:**

- 1) Claimant was reevaluated for medical eligibility for the M-WIN program. Medical records were submitted to the state Medical Review Team (MRT) in October 2011. MRT's decision was issued November 4, 2011 which reads in pertinent parts (D-3):

After considering all information a decision has been made that the above client is not mentally disabled. Ct [client] is dxed [diagnosed] Depressive D/O NOS [disorder not otherwise specified]. 15A indicates impairment is n/a significantly affected by mental illness.

After considering all information a decision has been made that the above client is not disabled. No physical disabilities noted. The above does not qualify for M-WIN.

- 2) Claimant testified she needs Medicaid so that she can continue working. Claimant stated she has problems with her foot and has to wear custom-made insoles. Claimant has hypertension, fibromyalgia, acid reflux, depression, high cholesterol, heart palpitations, a prolapsed bladder and a cyst on her back. Claimant stated she has pain throughout her body from the fibromyalgia, for which there is no cure.

Claimant stated she cannot afford treatment of her medical conditions without Medicaid and without treatment, she would have to quit working. Claimant stated she has not felt any improvements in her health over the last year. Claimant stated her health would worsen without her medications. Claimant is a waitress and has a General Education

Degree. Claimant stated if she were to lose her medical card, she would apply for Social Security Disability.

- 3) A general physical completed on March 22, 2010 by Donna Moore, NP-C that was submitted to MRT for Claimant's previous approval reads in pertinent part (D-3):

Diagnosis: Major – anxiety, depression  
Minor – hypertension, fibromyalgia, fatigue, insomnia, hyperlipidemia

Is applicant able to work full-time at customary occupation or like work?  
No, due to pain, anxiety, depression, insomnia and fatigue

Is applicant able to perform other full-time work? No

What work situations, if any, should be avoided: Stressful situations

Duration of inability to work full-time: Lifetime

- 5) The psychiatrist's summary that was completed in conjunction with a psychiatric evaluation on August 25, 2011 by Dr. Urick that was submitted for the MRT reevaluation reads in pertinent part (D-3):

Date of Last Patient Contact: 8/25/11  
Diagnosis: Depressive Disorder NOS  
Prognosis: Good  
Employment Limitation: Ability to maintain employment is not significantly affected by mental illness. However, it does appear that medical issues may interfere with working and this should be evaluated separately

- 6) A general physical completed on May 31, 2011 by Donna Moore, NP-C, which was submitted to MRT for the reevaluation reads in pertinent parts (D-3):

Diagnosis: Major – anxiety, depression, fibromyalgia  
Minor – hypertension, fatigue, insomnia, hyperlipidemia

Is applicant able to perform other full-time work? No, pain of joints and nerves, anxiety, depression, fatigue syndrome

Is applicant able to perform other full-time work? No, see #1 [above]

What work situations, if any, should be avoided: sitting for longer than 15 min., lifting, standing

Duration of inability to work full-time: Unknown

- 8) WV Income Maintenance Manual § 23.2 states:

The individual must be disabled as defined by the Social Security Administration (SSA). The disability may be determined by Social Security or by the State Medical Review Team (MRT). Disability, for this coverage group, is defined as a medically-determined physical or mental condition which has lasted or is expected to last a year or more or is expected to result in death.

- 9) WV Income Maintenance Manual § 23.12 A and B state:

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.

- 10) 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 has expected to last for a continuous period of not less than 12 months or can be expected to result in death.

- 11) 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 § 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)

- 12) 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 impairments(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)

- 13) 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 performing substantial gainful activity as defined in 20 CFR § 404.1510, a requirement for M-WIN.
- 2) Claimant's impairments are expected to last at least 12 months as required in 20 CFR § 404.1509.
- 3) Claimant has an impairment that affects her physical ability to perform basic work activities as set forth in 20 CFR § 404.1520. The general physical dated May 31, 2011 indicated Claimant is unable to work full time at her customary occupation or other full time employment. The medical documentation from MRT's approval in 2010 demonstrates no improvement in Claimant's condition from the documentation that was submitted that resulted in the 2011 denial.
- 4) Claimant continues to meet the definition of disability based on the medical documentation provided.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate Claimant's M-WIN coverage. Claimant will be reevaluated by the state Medical Review Team in February 2013.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23<sup>rd</sup> day of February 2012**

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**Kristi Logan**  
**State Hearing Officer**