



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

Board of Review  
P.O. Box 1736  
Romney, WV 26757

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

Earl Ray Tomblin  
Governor

April 5, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held March 29, 2012. Your hearing request was based on the Department of Health and Human Resources' determination that you are not medically eligible to meet program 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 was inconclusive to make a final determination of your eligibility for the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to REVERSE the action of the Department to terminate your eligibility for the SSI-Related Medicaid Program and REMAND the matter to the Medical Review Team for a reevaluation of your medical eligibility.

Sincerely,

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

cc: Erika Young-Chairman, Board of Review  
Penny Tinsman, Economic Service Supervisor

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

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

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-586**

**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 on a timely appeal, filed February 2, 2012.

It should be noted here that the Claimant's benefits under the SSI-Related program continue at the previous level of determination pending a decision from the State Hearing Officer.

**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

Penny Tinsman, Economic Service Supervisor

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 requirement 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 (DFA-RT-2) dated November 10, 2011
- D-3 Medical Review Team Social Summary Outline (DFA-RT-1) dated December 14, 2011
- D-4 Medical Review Team General Physical (DFA-RT-5) dated November 29, 2011 and Physician's Summary dated November 29, 2010
- D-5 West Virginia Department of Health and Human Resources Disability/Incapacity Evaluation dated December 19, 2011
- D-6 Notice of Decision dated January 11, 2012

**Claimants' Exhibits:**

- C-1 Physician's Statement from ---- ----, M.D.

**VII. FINDINGS OF FACT:**

- 1) On November 10, 2011, the Claimant completed a financial and medical recertification in order to determine her continued eligibility for SSI-Related Medicaid benefits. The corresponding information derived from the recertification was sent to the Medical Review Team, hereinafter MRT, to determine if the Claimant continued to meet the disability requirements under the program guidelines.
- 2) As part of the recertification process, the Claimant completed an updated Social Summary (Exhibit D-3) which documents the Claimant's reasons for applying for the program as, "has been diagnosed with Wegeners [sic] granuloma. Inflammation of small blood vessels. She takes chemotherapy in large doses. Client states she is in pain at all times." Additionally, the Social Summary documents the Claimant's requirements for assistance with daily activities as,

“cannot lay [sic] down to sleep, due to breathing troubles and that she requires assistance with cooking and bathing on bad days.” A General Physical (Exhibit D-4) of the Claimant was completed by -----, M.D. on November 29, 2011. This exhibit documents that Claimant’s statement of incapacity as “chronic pain, immunosuppressive therapy.” It shall be noted that page 2 of this exhibit is missing and was not presented during the hearing process. Both of these documents were submitted to MRT for review in the Medical Review Team Transmittal Memorandum (Exhibit D-2).

3) Ms. Penny Tinsman, Economic Service Supervisor, testified that a Physician’s Summary from --- ----, M.D. (Exhibit D-4) dated November 29, 2010 was included in the information sent to the MRT. Testimony indicated that the information included in the Physician’s Summary was utilized to determine the Claimant’s initial eligibility for Medicaid benefits, in which the Claimant was approved. This Physician’s Summary (Exhibit D-4) was dated November 29, 2010; however, the physician documented December 3, 2011 as the date of last patient contact and lists the Claimant’s diagnosis of Wegener’s Disease and no employment limitations.

4) In response to the information submitted, MRT issued a Disability/Incapacity Evaluation to the Economic Service Worker on December 19, 2011, as a decision of MRT’s findings regarding the Claimant’s disability. 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:

D-FART-8A of December 3, 2011 states employment limitation-“None”. The above does not qualify for MAO-D.

5) On January 11, 2012, the Department issued the Claimant a Notice of Decision (Exhibit D-6) which documents in pertinent part:

Your application for Medicaid has been denied effective 2/1/2012

Here is why: The state Medical Review Team has declared that ---- is not disabled. Please see the enclosed paperwork.

6) The Claimant provided a statement (Exhibit C-1) from her physician ---- ----, M.D., indicating that she is currently disabled. This exhibit documents in pertinent part:

---- ---- is under my care for treatment of Wegener’s Granulomatosis, Psoriatic Arthritis, Spondyloarthropathy, and Sciatica for the past several months. She was referred here form complaints of severe pain, swelling, stiffness, nausea, dizziness, diarrhea, and vomiting. She has been here since November, 2011.

After obtaining history and performing physical examination, she was diagnosed with Psoriatic Arthritis, Spondyloarthropathy, Wegener’s Granulomatosis and sciatica. The medical basis for her diagnosis are clinical findings, her laboratory testing, and imaging studies performed [sic].

Treatments prescribed include: Methotrexate, Folic Acid, Norco, and Ambien.

Limitations of her activities include difficulty with sitting after 10-15 minutes, standing after 10-15 minutes, and walking less than one city block.

Her fair prognosis for recovery is based on my past evaluation and treatment over the last several months. Her condition is expected to exceed the next 12 months.

Her disability is expected to last at least 12 months or more.

---- ----, Claimant's witness, testified that the Claimant's condition is deteriorating and she requires continual care. The Claimant believed that the physician, who completed the updated General Physical, was unfamiliar with her condition and that her specialist ---- ----, M.D. could have completed a more comprehensive evaluation of her condition.

7) 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.

8) 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)

9) 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).

10) 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)

11) 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. 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 a statement of symptoms.

- 2) Evidence and testimony revealed that the Claimant is a current recipient of SSI-Related Medicaid coverage with eligibility established in 2010. According to testimony, a Physician's Summary (DFA-RT-8a) (Exhibit D-4) dated November 29, 2010 was used in the determination of the Claimant's initial eligibility. Upon recertification of the Claimant's eligibility for 2011, the Medical Review Team terminated the Claimant's eligibility because her impairment did not significantly limit her ability to perform basic work activities. In support of their decision, the Medical Review Team cited the Physician Summary (DFA-RT-8a) (Exhibit D-4), indicating that the Claimant has no employment limitations. A review of the evidence submitted reveals that there are not conclusive dates documented on the Physician Summary to determine the recertification period for which the Physician's Summary (DFA-RT-8a) was intended.
- 3) Whereas, the Claimant submitted additional documentation that demonstrates that her limitations and conditions are expected to exceed twelve months and the evidence for which the Medical Review Team based their 2011 decision is inconclusive, it is the decision of the State Hearing Officer to REVERSE the decision of the Department that terminates the Claimant medical eligibility and REMAND the matter to the Medical Review Team for a reevaluation of the Claimant's disability. The clinical information submitted during the hearing process shall be included in the reevaluation of the Claimant's disability and the Claimant will receive notice of the Department's final determination and will have the opportunity to appeal any unfavorable decision.

**IX. DECISION:**

It is the decision of the State Hearing Officer to REVERSE the decision of the Department which terminates the Claimant's medical eligibility and REMAND the matter for a reevaluation of the Claimant's disability.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ day of April , 2012.**

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