



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

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

June 15, 2012

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Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held May 10, 2012. Your hearing request was based on the Department of Health and Human Resources' denial of SSI-Related Medicaid.

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. One of these regulations specifies that in order to be considered disabled, an individual over age 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. (West Virginia Income Maintenance Manual, Chapter 12.2.A.1)

The information that was submitted at your hearing revealed that you did not meet the medical eligibility requirements to establish disability for SSI-Related Medicaid.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to deny SSI-Related Medicaid.

Sincerely,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Misti Broyles, Department Representative

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

**IN RE:**        -----,

**Claimant,**

**v.**

**ACTION NO.: 12-BOR-847**

**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 concluded on June 15, 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 May 10, 2012, on a timely appeal, filed March 6, 2012.

**II. PROGRAM PURPOSE:**

The Program entitled Medicaid is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

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

Misti Broyles, Department Representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Claimant meets the medical eligibility criteria necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual, Chapter 12.2.A.1  
Code of Federal Regulations, 20 CFR §404.1505; §404.1509; §404.1520

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

**Department's Exhibits:**

- D-1 Documentation and correspondence to and from the Medical Review Team (MRT); Denial notices to Claimant, dated February 28, 2012; Case comments screen prints
- D-2 West Virginia Income Maintenance Manual, Chapter 12; Chapter 16.6; Chapter 16.9

**VII. FINDINGS OF FACT:**

- 1) Misti Broyles, representative for the Department, testified that the Claimant applied for SSI-Related Medicaid on August 25, 2011. Medical and psychiatric reports (Exhibit D-1) regarding the Claimant were gathered and forwarded to the Department's Medical Review Team (MRT). The MRT responded to Ms. Broyles regarding the medical documentation of the Claimant via a Disability/Incapacity Evaluation (ES-RT-3) form dated November 18, 2011 (Exhibit D-1), stating as follows, in pertinent part:

No physical disabilities noted. The above does not qualify for MAO-D/M-WIN.

In the section above, the Review Team Examiner had noted that the Claimant did not have a medically determinable impairment or combination of impairments which significantly limits the ability to perform basic work activity. Accompanying this memo, the MRT requested a psychiatric evaluation of the Claimant. In response to the submission of this information, the MRT provided a Mental Disability/Incapacity Evaluation (DFA-RT-3) form dated February 23, 2012 (Exhibit D-1), stating as follows, in pertinent part:

deny ct [client] has no mental dx [diagnosis]

The Department denied this application in writing on February 28, 2012 (Exhibit D-1), stating "THE MEDICAL REVIEW TEAM FOUND ----- NOT DISABLED/BLIND/INCAPACITATED."

- 2) The Code of Federal Regulations, 20 CFR §404.1505 provides the following definition of disability:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

- 3) The West Virginia Income Maintenance Manual, Chapter 12.2.A.1, defines disability for individuals age eighteen (18) or over as follows:

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.

- 4) The Code of Federal Regulations, 20 CFR §404.1520, outlines a five-step process for evaluating disability (emphasis added):

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (See paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (See paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). **If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled.** (See paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration

requirement, we will find that you are disabled. (See paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and §404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and §404.1560(c.) (emphasis added))

5) A general physical of the Claimant was completed on September 23, 2011 (Exhibit D-1), which noted that the Claimant is unable to work full-time at his customary occupation or like work. It was additionally noted that the Claimant would be unable to work for a period of six months.

6) A psychiatrist's summary of the Claimant was completed on December 14, 2011 (Exhibit D-1), which noted no diagnosis for the Claimant and no length of time his incapacity or disability is expected to last.

7) The Code of Federal Regulations, 20 CFR §404.1509 explains the *duration* requirement of step two of the five-step process as:

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 the duration requirement.

8) The Claimant testified that he is unable to function or work. He testified that he suffers from frequent falls, and that he has problems with his arms and legs. -----, the Claimant's mother, testified that the Claimant has had these problems for "five or six years" and that they keep getting worse.

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

1) The Claimant testified that he was not working. The Department's MRT agreed that the Claimant is not performing substantial gainful activity. The Claimant cannot be eliminated from the five-step process for establishing disability at step one.

- 2) The second step of the five-step process requires thresholds to be met in both severity and duration. The Claimant presented no diagnosis as a result of his psychiatric evaluation. The general physical of the Claimant determined the duration of his impairments to be six months, and the requirement is for at least twelve months. The Claimant failed to establish disability and the Department was correct to deny SSI-Related Medicaid on this basis.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Department's denial of SSI-Related Medicaid based on a finding that the Claimant was not disabled.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_\_ Day of June, 2012.**

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**Todd Thornton  
State Hearing Officer**