



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

Rocco S. Fucillo
Cabinet Secretary

November 19, 2012

Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your hearing held November 16, 2012. Your hearing request was based on the Department of Health and Human Resources' termination of SSI-Related Medicaid based on 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 SSI-Related Medicaid program 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 do not have a severe impairment that would prevent you from engaging in substantial gainful employment and do not meet the definition of disability.

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

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

cc: Chairman, Board of Review
Jessica Shumake, Economic Service Worker

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

IN RE: ----,

Claimant,

v.

ACTION NO.: 12-BOR-2272

**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 held on November 16, 2012, by videoconference. This hearing was held in accordance with the provisions found in the West Virginia Department of Health and Human Resources Common Chapters Manual, Chapter 700. This fair hearing was convened on a timely appeal, filed September 26, 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
Jessica Shumake, Economic Service Worker

Presiding at the hearing was Kristi Logan, 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 Department's termination of Claimant's SSI-Related Medicaid was correct.

V. APPLICABLE POLICY:

WV Income Maintenance Policy 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 Medical Review Team Packet dated August 2012
- D-2 Medical Review Team Packet dated June 2011

VII. FINDINGS OF FACT:

- 1) Claimant was reevaluated for medical eligibility for the SSI-Related Medicaid program. Medical reports were sent to the Medical Review Team (MRT) in August 2012, for a disability determination. MRT issued a decision on September 5, 2012 (D-1), which reads in pertinent part:

After considering all information a decision has been made that the above client is not: Disabled – SSI-Related Medicaid 18/Over

Examination report of 06/12/12 shows no evidence of a one year physical disability and indicate that you are able to work full time.

- 2) Claimant testified he has lower back problems and a sleep disorder. His current physician is Dr. ----, whom he started seeing after his previous physician left the area. Claimant stated he takes Dexilant, Flexeril and temazepam, but cannot afford these medications without Medicaid.

Claimant stated he last worked in 2009 at a grocery store and has a 12th grade education. Claimant stated he could not find employment even if he was able to work.

- 3) The results of a physical examination (D-1) on June 26, 2012, by ----- ----, MD document in pertinent parts:

Diagnosis: Major: GERD [gastroesophageal reflux disease]
Minor: Insomnia

Is applicant able to work full-time at customary occupation or like work:
Yes

Is applicant able to perform other full-time work: Yes

Summary of Conclusions: Pt [patient] had some learning disabilities which impairs job skills, but he is not physically disabled at this time.

- 4) The Physician's Summary (D-1) completed by Dr. ---- documents in pertinent parts:

Diagnosis: Gastroesophageal Reflux, Low Back Pain, Tobacco Abuse

Prognosis: Fair

Length of Time Incapacity/Disability is Expected to Last: Not disabled

Employment Limitation: I do not think that he is incapacitated

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

- 6) 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 § 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)

- 7) 20 CFR § 404.1508, 404.1509, and 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)

- 8) 20 CFR § 404.1508, 404.1509, and 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 not performing substantial gainful activity as defined in 20 CFR § 404.1510.
- 2) Claimant does not have a severe impairment that would prevent him from engaging in work activities. Claimant's physician reported that Claimant is not disabled and is able to work full-time. Claimant does not meet the severe impairment requirement as found in 20 CFR § 404, Sub Part P, App. 1.
- 3) Claimant does not meet the medical criteria to receive SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate Claimant's SSI-Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 19th day of November 2012

**Kristi Logan
State Hearing Officer**