



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

October 17, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Margaret Fain, [REDACTED] County DHHR

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

[REDACTED],

Appellant,

v.

Action Number: 18-BOR-2310

WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 was convened on October 16, 2018.

The matter before the Hearing Officer arises from the September 5, 2018, determination by the Respondent's Medical Review Team that the Appellant was not disabled.

At the hearing, the Respondent appeared by Melissa Yost, Economic Service Supervisor. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED], his mother. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Medical Information Request (DFA-RT-8) dated July 27, 2018
- D-2 Medical Review Team Social Summary Outline (DFA-RT-1) dated July 3, 2018
- D-3 Disability/Incapacitation Evaluation (ES-RT-3) dated August 31, 2018
- D-4 Medical Records from the [REDACTED] dated November 2017 through June 2018
- D-5 Disability/Incapacitation Evaluation (ES-RT-3) dated July 14, 2017
- D-6 Medical Records from the [REDACTED] dated April 2015 through March 2017

Appellant's Exhibits:

- A-1 Medical Records from [REDACTED], D.O., dated October 2017 and November 2017

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was determined disabled by the Respondent's Medical Review Team (MRT) in July 2017, with a reevaluation of eligibility due in July 2018 (Exhibit D-5).
- 2) The July 2017 MRT decision specified that the reevaluation packet must include a Physician's Summary form (DFA-RT-8a) from the Appellant's physicians, [REDACTED], D.O. and [REDACTED], D.P.M. (Exhibit D-5).
- 3) On July 3, 2018, an updated Social Summary was completed with the Appellant in conjunction with his MRT reevaluation (Exhibit D-2).
- 4) The Respondent requested medical records from [REDACTED], D.O. on July 27, 2018, and requested that the Physician's Summary form be completed (Exhibit D-1).
- 5) The updated Social Summary and current medical records from the [REDACTED] were submitted to MRT for reevaluation in August 2018. As of the date of submission, medical records had not been received from Dr. [REDACTED].
- 6) MRT determined that the Appellant was no longer disabled, specifically stating that there was "no significant medical condition on record causing significant disability" (Exhibit D-6).

APPLICABLE POLICY

West Virginia Income Maintenance Manual §13.4.2.A states that follow-up requests for medical records must be made by thirty (30) days after the initial request and each 30 days thereafter.

West Virginia Income Maintenance Manual §13.7.1.B.2 states that Form DFA-RT-8 (Medical Information Request) and DFA-RT-8a (Physician's Summary) are sent to request information from physicians. **If the physician or mental health professional fails to complete the form, a second one must be sent** (emphasis added). The date the second one is sent must be noted on the DFA-RT-2. The Worker must indicate which sections of the form must be completed by the physician.

West Virginia Income Maintenance Manual §13.8.2.B states that when a case is submitted to MRT for reevaluation of disability, incapacity, blindness, WV WORKS work requirement good cause, or M-WIN Medically Improved, the following materials must be included:

- DFA-RT-2;

- A current DFA-RT-1 (Social Summary Outline), if the previous ES-RT-3 (Disability/Incapacitation Evaluation) indicated one is needed,
- The latest ES-RT-3,
- All material on which the original decision was based;
- **The new information requested by the MRT for reevaluation purposes** (emphasis added); and,
- Hearing summary if the MRT decision was reversed by the Hearings Officer on the issue of incapacity, disability, or blindness.

DISCUSSION

Pursuant to policy, cases submitted to MRT for reevaluation of disability must include an updated Social Summary, the previous Disability/Incapacity Evaluation decision, medical records that were submitted with the previous referral and any information that was specifically requested by MRT.

The Appellant was determined to be disabled by the Respondent's MRT in July 2017, with a reevaluation due in July 2018. MRT specifically requested that Physician's Summary forms from Dr. [REDACTED] and Dr. [REDACTED] were to be included with the reevaluation packet.

The Respondent requested medical records from Dr. [REDACTED] on July 27, 2018. The Respondent submitted the reevaluation packet to MRT in August 2018 without medical records or the Physician's Summary when they had not been received. There was no information provided that a second request for records from Dr. [REDACTED] was attempted.

Medical records from the [REDACTED] were submitted with the reevaluation packet, but the Physician's Summary that was to be completed by Dr. [REDACTED] was omitted.

Policy stipulates that if a physician fails to complete the Physician's Summary as requested, a second request must be sent and the case record must document the second and any subsequent requests. The Respondent failed to provide any documentation that a second request was sent to Dr. [REDACTED] for the completion of the Physician's Summary. Although medical records from Dr. [REDACTED] were received and submitted with the reevaluation, the Physician's Summary, which was specifically requested by MRT, was not included. There was no documentation provided that the Respondent sent a second request to Dr. [REDACTED]

The Respondent did not adhere to policy in its failure to send a second request to Drs. [REDACTED] and [REDACTED] for the completion of the Physician's Summary, which were required by MRT for the reevaluation of the Appellant's disability.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, if a physician fails to complete the Physician's Summary, a second request for the information must be made.

- 2) The Respondent did not make a second request for the Physician's Summary to Drs. [REDACTED] and [REDACTED]
- 3) Policy requires certain information to be submitted to MRT for a reevaluation of disability.
- 4) The Respondent did not submit the Physician's Summary from Drs. [REDACTED] or [REDACTED] as requested by MRT.
- 5) A final determination of the Appellant's disability cannot be made without the missing medical documentation specifically requested by MRT.

DECISION

It is the decision of the Hearing Officer that this matter is **REMANDED** to the Respondent for reevaluation of disability. The Appellant's case will revert to the status as it existed prior to notice of adverse action. The Appellant will receive notice of the Respondent's final determination and will have the opportunity to appeal an unfavorable decision.

ENTERED this 17th day of October 2018

**Kristi Logan
State Hearing Officer**