



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

July 21, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 26, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your medical card under 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. Some of these regulations state as follows: 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 can be expected to result in death or which can be expected to last for a continuous period of not less than twelve months. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at your hearing revealed that in the opinion of the State Hearing Officer, you do not meet the above stated definition.

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate your medical card under the SSI-Related Medicaid Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Judy Schurdell, DHHR

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

Claimant,

v. Action Number:

**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 May 17, 2005 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 January 26, 2005 on a timely appeal, filed October 29, 2004. It should be noted that this hearing was originally scheduled for January 19, 2005 but was rescheduled by the State Hearing Officer to January 26, 2005. The record was left open at the conclusion of the hearing in order for psychological and psychiatric evaluations to be completed. The case was then submitted to the Medical Review Team (MRT) for reconsideration. The State Hearing Officer received the MRT decision on May 17, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled SSI-Related 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
Judy Schurdell, Department Hearing Representative

Presiding at the hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the claimant meets the eligibility requirement of categorical relatedness for SSI Related Medicaid by qualifying as a disabled person as defined by the Department.

V. APPLICABLE POLICY:

WV Income Maintenance Manual Section 12.2(A)
20 CFR 416.905 and 416.920
Section 12.04, 20 CFR Part 404, Subpart P. App. 1 & 2
20 CFR 404.1594 (b)(1)

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Hearing Form IG-BR-40 Appointment Letter
- D-2 Hearing Form IG-BR-29 Hearing/Grievance Record Information
- D-3 Hearing request dated 10/29/04.
- D-4 Closure Notice dated 10/26/04
- D-5 ES-RT-3 MRT Disability Evaluation – 10/08/04
- D-6 DFA-RT-12 MRT Transmittal Memo – 10/07/04
- D-7 Social Summary 0 09/17/04
- D-8 OFS-RT-5 General Physical [REDACTED] 10/05/04
- D-9 OFS-RT-15a Psychiatrist's Summary Dr. [REDACTED] 09/03/04
- D-10 Previous MRT Packet 04/14/04
- D-11 ES-5 Recording Log
- D-12 MRT Packet for Reconsideration dated 04/04/05

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of SSI-Related Medicaid because she was found disabled by the Medical Review Team (MRT).
- 2) The case was due for a MRT reevaluation in 11/04. Information was gathered and the case was submitted to MRT on 10/07/04. The decision from MRT was received on

10/21/05 stating the claimant was no longer disabled. (D-5)

3) The claimant was sent a closure notice for the SSI-Related Medicaid on 10/26/04. (D-4) A hearing was requested on 10/29/04. (D-3)

4) The State's definition of disability for Medicaid is found in WV Income Maintenance Manual Section 12.2 and reads as follows:

An individual who is age 18 or over is considered to be disabled if he is unable to engage in 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.

5) The State's definition of disability for Medicaid is the same as the definition used by the Social Security Administration in determining eligibility for SSI based on disability which is found at 20 CFR 416.905.

6) There is a five-step sequence of questions to be addressed when evaluating a person's ability to perform substantial gainful activity for purposes of SSI; these are set forth in 20 CFR 416.920.

7) The first sequential step is:

Is the person performing substantial gainful activity as defined in 20 CFR 416.910? If so, the person is not disabled.

8) The claimant is not employed.

9) The second sequential step is:

If not, does a severe impairment exist which has lasted or can be expected to last one year or result in death? If not, the person is not disabled.

10) The general physical report dated 10/05/04 lists major diagnosis as depression (by history) and minor diagnosis as arthritis lumbar. Unable to determine claimant's ability to work full-time. Should avoid any repetitive excessive lifting, pushing, pulling, and carrying.(D-8)

11) The physician's summary from Dr. [REDACTED] lists the last patient contact 09/03/04. Diagnoses: Major Depression - secondary panic attacks, Adjustment d/o mixed mood. Prognosis: Fair. Undetermined length of disability. Employment limitation not evaluated. (D-9)

12) The psychiatric evaluation by Dr. [REDACTED] dated 04/08/05 (D-12) reads in part:

Mental Status: Neat, tidy and cooperative. Talked clearly, audibly, and rationally. Speech was clear, lacked spontaneity. Affect being appropriate, a little dysphonic. She was oriented for time, place, date and person. No evidence of psychosis or thought

disorder was elicited. No bizarre thought processes, tangential or circumstantial thinking was elicited. No active homicidal or suicidal ideations or plans were entertained. She was able to subtract 33 cents from a dollar. Appears to be of limited intelligence due to sociocultural deprivation, possible in the dull normal range of intelligence clinically. Able to remember name and address after two and five minutes with a little help. She had difficulty with serial sevens.....Insight, judgment, and problem solving seemed to be fair.

Diagnoses: Axis I: Major Depression, Recurrent, Moderate to Moderately Severe in Nature; Adjustment Disorder with Anxious and Depressed Mood, Secondary to Physical Illness and Social Factors. Axis II: Borderline Personality Disorder, Borderline to Dull Normal Range of Intellectual Functioning, Clinically.

- 13) The psychological report dated 03/25/05 (D-12) reads in part:

On the WAIS – III, the claimant obtained a full scale IQ of 80 which would put her in the borderline range of intellectual functioning. The probability is 90 out of 100 that her true IQ score falls between 77 and 84. The verbal IQ was 84 and performance IQ was 79.

The validity scores in the MMPI – 2 indicate the profile is un-interpretable because of the extreme item endorsement. The individual may have consciously exaggerated the psychopathology to present the view that she is seriously disturbed in order to benefit from services.

On the BDI, the claimant obtained a score of 28 which indicates moderate to severe depression.

Summary: The client sees herself as unable to maintain employment due to the feelings of uncomfortableness around others. Ms. _____ sees herself as a victim and takes little responsibility for situational factors. Recommendation for referral to Vocational Rehabilitation for evaluation and training.

- 14) The claimant's psychiatric diagnosis in 2004 was generally the same as in the current evaluation. (D-12)

- 15) The third sequential step is:

If the person has a severe impairment, is the impairment a listed impairment (under 20 CFR Part 404, Subpart P, App. 1) or its medical equivalent? If so, the person is disabled.

- 16) Section 12.04, 20 CFR Part 404, Subpart P. app. 1 discusses affective disorders.

- 17) None of the medical evidence indicates that the listing is met.

- 18) The fourth sequential step is:

If not, what is the person's residual functional capacity, and can that person still perform his or her former work? If so, the person is not disabled.

- 19) The claimant's former work consisted primarily of housekeeper for various health agencies. The general physical reads that the claimant should avoid any repetitive excessive lifting, pushing, pulling and carrying. She has also worked as a cashier.
- 20) The fifth and final step is:

If not, can the person do any other work, based upon the combined vocational factors of residual functional capacity, age, education , and past work experience? If not, the person is disabled.
- 21) The claimant was 27 years of age at the time of the hearing. She has a high school education.
- 22) According to rule #201.21 from 20 CFR Part 404, Subpart P, App. 2, a person limited to sedentary work who is age 18 – 49, has a high school education and whose previous work experience is unskilled or semi-skilled with skills non-transferable is not disabled.
- 23) 20 CFR 404.1594 (b)(1) Code of Federal Regulations reads that medical improvement is any decrease in the medical severity of your impairment which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).

VIII. CONCLUSIONS OF LAW:

- 1) The medical evidence listed in Part VII., #10, #11, #12 & #13 does not support the requirement that the claimant must have a severe impairment which has lasted or can be expected to last one year or result in death. There is no definitive length of disability listed in the reports.
- 2) The most recent psychological report (see #13 above) reads in part that the claimant sees herself as a victim and takes little responsibility for situational factors. The recommendation was made for a referral to vocational rehabilitation.
- 3) Although the claimant may not be able to perform some past work activities, her age and high school education shows she could perform other types of work.

IX. DECISION:

It is the finding of the State Hearing Officer that the claimant does not continue to meet the definition of disability. The action described in the notification letter dated October 26, 2004 will be taken.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 21st Day of July, 2005.

**Margaret M. Mann
State Hearing Officer**