



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
November 15, 2005

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your Medicaid coverage.

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 Medicaid program (SSI-Related) is determined based on current regulations. One of these regulations specifies 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 can be expected to result in death or which can be expected to last for a continuous period of not less than twelve months. [West Virginia Income Maintenance Manual Section 12.2 (A)]

The information which was submitted at the hearing revealed that your current condition fails to meet criteria necessary to establish disability for purposes of the Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the action of the Agency to discontinue Medicaid coverage as set forth in the June 28, 2005 notification.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Chairman, Board of Review  
Michael Phillips, ESS

## **WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES**

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number- 05-BOR- 6294**

**West Virginia Department of Health and Human Resources,  
Respondent.**

### **SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

#### **I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 15, 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 originally convened on August 31, 2005 on a timely appeal filed June 30, 2005. It should be noted here that benefits under the SSI- Related Medicaid program have been continued. All persons giving testimony were placed under oath.

#### **II. PROGRAM PURPOSE:**

The program entitled Medicaid is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources. SSI- Related Medicaid 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

\_\_\_\_\_, mother to claimant

Michael Phillips, ESS, Agency Representative

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the claimant continues to meet the medical eligibility requirement necessary to qualify as a disabled individual for purposes of the (SSI- Related) Medicaid Program?

## **V. APPLICABLE POLICY:**

WV Income Maintenance Manual Section 12.2(A)  
20 CFR § 404.1505 - 404.1545, Code of Federal Regulations

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

D-1 - Combined Application and Review Form, 2/18/05  
D-2 – MRT Package submitted 5/11/05  
D-3 – Notification, 6/28/05  
C-1 – Psychological Evaluation, 10/5/05 (received by this Examiner 10/25/05)

## **VII. FINDINGS OF FACT:**

- 1) The claimant requested a hearing June 30, 2005 in response to a June 28, 2005 notification of Medicaid closure. The agency's Medical Review Team had found the claimant no longer medically eligible for the program. A hearing was convened August 31, 2005.
- 2) During the hearing, Exhibits D-1 through 3 were submitted.
- 3) Testimony was heard from the individuals listed in Section III above.
- 4) The agency presented the social/medical package - Exhibit D-2.
- 5) Testimony by and on behalf of the claimant reveals she was involved in an accident in 2002. Her mother feels that her condition has not improved. She is seen by Dr. [REDACTED] every 2- 3 weeks. The claimant is 20 years of age and is currently working at a [REDACTED] Restaurant part-time. She was working 20- 21 hours per week before school started. She has been at [REDACTED] about 6 weeks. She is currently a college sophomore and lives in a dorm during the week. She has applied for SSI and her appeal is currently at the ALJ level.
- 6) Exhibit D-2, General Physical Exam of 3/12/05 ( [REDACTED] ) provides diagnoses of Oppositional Defiant Disorder, Major Depression, and GERD. The ability to work full-time is noted with restrictions being "direct contact with large groups of people". No physical limitations are documented.
- 7) Exhibit D-2, Psychiatric Evaluation of 11/7/03 (Dr. Attia) reveals a history of substance abuse, physical abuse by parents and psychiatric illness. Diagnoses include Major Depressive Disorder, recurrent, in full remission; Generalized Anxiety Disorder and Borderline Personality Traits.
- 8) Exhibit D-2, Psychiatric Progress Notes (Dr. Attia) 11/14/03- 2/11/05 provide assessments- "The patient is responding fairly to her treatment". Treatment- Continue current medications and continue psychotherapy.
- 9) Discussion concerning an updated psychiatric evaluation resulted in the agency being directed to schedule an appointment with a psychiatrist. The claimant indicated that her current therapist would not provide anything beyond the updates found in the submitted exhibits. The agency was directed to schedule a psychiatric evaluation and if that was not possible have a psychological

evaluation completed. The claimant indicated she had attempted to see other psychiatrists in the area with no success. During this period, the claimant was advised that she could submit any additional information deemed appropriate

10) Exhibit C-1 Psychological Evaluation of 10/5/05 (Dr Pearse) provides diagnoses of Cognitive Disorder NOS, Personality Disorder NOS. Intellectual functioning is in the average range. Her present behavior tends to be suggestive of isolation and passive-aggressiveness which could result in oppositional type behaviors.

11) 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.

12) 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)

13) 20 CFR § 404.1545 Code of Federal regulations:

Your impairments may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is what you can still do despite your limitations.

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

1) There is a five-step sequence of questions to be addressed when evaluating disability.

2) Is the person performing substantial gainful activity? The claimant is employed part-time on weekends while attending school. The work is currently less than 20 hours per week.

3) Does a severe impairment exist which is expected to last one year or result in death? Medical documentation relating to the claimant's psychological status suggests that her symptoms have more than a minimal effect upon her ability to engage in gainful activity. Impairment is found.

4) If the person has a severe impairment, is the impairment a listed impairment? Evidence fails to establish a severe "listed impairment", as set forth in the regulations.

5) What is the person's Residual Functional Capacity and can that person still perform his or her former work? Evidence reveals the claimant worked during this past summer at a Subway Restaurant for about 20 – 21 hours per week. She currently works weekends now that she has returned to school. She is currently a sophomore in college. No physical limitations are documented.

6) Can the person do any other work based upon the combined vocational factors of residual functional capacity, age, education, and past work experience? The claimant is 20 years of age with at least 13 years of formal education. Medical evidence offered reveals no physical limitations and in fact the physical exam of 3/12/05 indicates full- time employment. Based on the notes from her therapist and the psychological evaluation of 10/5/05, the claimant's psychological issues, while significant, appear to be sufficiently controlled and have in fact allowed her to be employed over the past 6 weeks. On the basis, of age, education, and residual capacity there are a significant number of employment opportunities existing in the national economy for with the claimant could qualify and is capable of performing.

#### **IX. DECISION:**

After reviewing the information presented during the hearing and the applicable policy and regulations, the determination of the Agency as set forth in the June 28, 2005 notification is **upheld**. The claimant is found currently not medically eligible for participation in the Medicaid Program.

#### **X. RIGHT OF APPEAL:**

See Attachment.

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29

**ENTERED this 15<sup>th</sup> Day of November, 2005.**

---

**RON ANGLIN**  
**State Hearing Examiner**