



**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
150 Maplewood Avenue  
Lewisburg, WV 24901  
Telephone (304) 647-7476 Fax: (304) 647-7486

**Joe Manchin III**  
Governor

February 25, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 25, 2004. 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 and benefit levels for the SSI Related Medicaid Program are 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. (WV Income Maintenance Manual Section 12.2 (A))

The information which was submitted at the hearing revealed that, in the opinion of the State Hearing Officer, you do meet the above stated definition.

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

Sincerely,

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

cc: Board of Review  
Judy Schurdell, Department Hearing Representative

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

**NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

### **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 January 4, 2005 for Ms. \_\_\_\_\_.

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 25, 2004 a timely appeal filed June 3, 2004.

It should be noted here that benefits under the SSI Related Medicaid Program have been continued pending the hearing decision.

All persons giving testimony were placed under oath.

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

The SSI Related Medicaid Program 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

\_\_\_\_\_, Claimant's Mother

\_\_\_\_\_, Claimant's Fiance' (now husband)

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. QUESTION 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)

\_\_\_\_ (Part V. Continued)

20 CFR 416.905 and 416.920 and 20 CFR 404.1594 (b)(1) Code of Federal Regulations

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

DHS-1) Form IG-BR-40 Appointment Letter  
DHS-2) Form IG-BR-29 Hearing/Grievance Record Information  
DHS-3) Hearing Request dated 06/03/04  
DHS-4) MRT Decision Notification dated 05/27/04  
DHS-5) Closure Notice dated 05/28/04  
DHS-6) Form ES-RT-3 MRT Disability Evaluation  
DHS-7) OFS-RT-2 MRT Transmittal Memo dated 04/13/04  
DHS-8) Social Summary dated 02/02/04  
DHS-9) [REDACTED] Report dated 04/06/04  
DHS-10) OFS-RT-5 General Physical – [REDACTED] dated 02/16/04  
DHS-11) Previous MRT Packets – 03/03, 04/02, 07/01 & 05/00  
DHS-12) ES-5 Recording Log  
C-1) Statement from \_\_\_\_  
C-2) Statement from \_\_\_\_

### **Correspondence**

Correspondence-1) Letter dated 12/14/04 from Judy Schurdell to \_\_\_\_

## **VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. Findings of Fact:**

1. This hearing was held on August 25, 2004. At the conclusion of the hearing, the State Hearing Officer requested a general physical report. The reason for the request was that the previous physician requested some specialist reports and none are available. An appointment was scheduled at [REDACTED] Clinic on 09/20/04. The Department was unable to obtain the report after several requests. A letter was then sent to the claimant to get the report and submit it to the Department by 12/27/04. This claimant did not cooperate or respond to the request. (Correspondence-1) The State Hearing Officer was notified on January 4, 2005 of the claimant's failure to cooperate. A decision will be based on the information submitted at the hearing on August 25, 2004.

2. The claimant originally applied for SSI-Related Medicaid on 05/08/00. She was determined to be disabled by the Medical Review Team (MRT) in 07/01 and continued to be disabled with reevaluations through 03/03. A reevaluation packet was submitted to MRT on 04/13/04. On 05/18/04 a decision was received from MRT stating the claimant was no longer considered disabled. The notice of the MRT decision was sent to the claimant on 05/27/04 and 05/28/04. On 06/03/04 the hearing request was received. Benefits have continued pending the hearing decision.

3. The claimant is 24 years of age, is a high school graduate and has an associate's degree in accounting. She last worked in May, 2003 when she was laid off at the [REDACTED] where she done secretarial work part-time.

\_\_\_\_ (Part VII. Continued)

4. The claimant testified that she had seizures as a baby. She lists her ailments/complaints as nerves/panic attacks, back and neck problems- pinched nerve, dizziness, and chest pain. Recently, some things have become noticeable such as one day she was lying on the bed and she started shaking. She does not take any prescribed medication and sometimes takes Excedrin for pain. She is cautious of the medication because of her seizures.
5. The claimant was denied SSI but is appealing the decision.
6. The claimant is able to clean her home, sometimes cooks and does laundry, she has a driver's license but has someone with her when she drives, she visits friends/family and has visitors in her home. She does not do yard/garden work. It depends on how she feels as to what she can do. She is unable to walk a long distance.
7. The claimant has no income and feels her condition has not improved since she was first approved for Medicaid.
8. A psychological examination was completed 9/3/04 (DHS-9). It reads in part:

**Mental Status Examination:**

Ms. \_\_\_\_ was alert and oriented in all spheres. Her recent memory was intact as evidenced by good knowledge of current affairs. Her remote memory was impaired as evidenced by poor recall of educational milestones. Her immediate and intermediate memory was intact. She offered a semiabstract interpretation of proverbs. Attention and Concentration were good. Insight and judgment were present.....Ms. \_\_\_\_ was cooperative during the interview. Motor activity was calm. Her mood was depressed and her affect blunted. Her speech was normal. When asked about feelings of worthlessness, uselessness and hopelessness she stated "It depends on the day". She denied the experience of suicidal and homicidal ideation. The experience of hallucinations and delusions was not elicited. She denied having a history of physical or sexual abuse, but stated she suffered mental abuse during her parents separation and divorce.

Ms. \_\_\_\_ reported occasional dreams and nightmares. ....A typical day involves sleeping, eating, sleeping again and watching television.

**Test Results**

Ms. \_\_\_\_ was administered the Wechsler Adult Intelligence Scale-III. She obtained a Verbal IQ of 89, Performance IQ of 109 and Full Scale IQ of 97. This places her in the Average classification of intellectual functioning. The 20-point difference between Verbal and Performance IQ's is significant at the .01 level of probability and may suggest the presence of learning disability.

Range Achievement Test-!!!

Test results show post high school for reading and spelling and 7<sup>th</sup> grade for math.

Bender Gestalt Visual Motor Test – negative for organicity,

Beck Depression Inventory:

\_\_\_\_ (Part VII. Continued)

Score of 42 placing her in the extreme range of depression.

Beck Anxiety Inventory

Score of 39 placing her within the severe range of anxiety.

**Summary and Conclusions:**

Axis I    Generalized Anxiety Disorder  
          Depression Disorder, NOS  
          Panic Disorder without Agoraphobia  
          Rule out specific phobias

Axis II    Deferred

Axis III    History of epilepsy (petit mal seizures), history of high cholesterol in childhood, sinus problems, headaches, body pain

It is believed she would benefit from psychological services and perhaps psychiatric care.

9. The general physical completed by [REDACTED] 02/10/04 (DHS-10) reads in part:

Major: Seizure Disorder	Minor: ATS
DJD	Obesity

Able to work full time at customary occupation or like work? No. Secretarial; work – pain in wrists, etc.

Able to perform other full time work? No.

Work situations to be avoided: stress, heavy lifting, repetitive hand motions.

No time listed as duration of inability to work full time. Recommended neurologist and orthopedic evaluations.

10. Physician's Summary (DHS-11) from psychologist reads in part:

Last Patient Contact: 03/04/03

Diagnosis: Depressive Disorder, NOS; Generalized Anxiety Disorder; Panic Disorder Agoraphobia.

Prognosis: Fair intervention

Employment Limitation: Difficulty in crowds of strangers

11. Psychiatric report from Dr. [REDACTED] dated 04/01/02 reads in part:

Ms. \_\_\_\_ was diagnosed with Depressive Disorder, NOS and Panic Disorder without Agoraphobia. Her Full Scale IQ was 07 placing her in the Average range of intelligence. Her prognosis is fair. She does have a combination of emotional and physical problems. She is not capable of steady gainful employment at the present time. She may be a candidate for vocational rehabilitation.

\_\_\_\_ (Part VII. Continued)

12. The general physical completed 05/11/01 shows the claimant unable to work full time at customary or like work or other full time work. Limited to sedentary work. Major diagnosis: Seizure Disorder, Chronic Joint Pain, Depression and Panic Attacks. Minor Diagnosis: Obesity and Gerd. Unable to do ? activity, no lifting, pushing, pulling etc. No duration of inability to work full time.

13. Psychological report of 06/15/2001 from [REDACTED] reflects the same diagnoses of the one completed 03/17/2004.

14. The claimant presented statements from her mother and fiancé' attesting to her physical condition. (C-1 and C-2)

**B. Conclusions of Law:**

1. 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.

2. 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.

3. 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.

4. 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.

5. The claimant is not employed.

6. 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.

7. The claimant was found to meet the definition of disability by the Medical Review Team in July, 2001. The major diagnoses at that time were seizure disorder, chronic joint pain, depression and panic attacks. The minor diagnoses were obesity and Gerd. No duration of inability to work full time was given. The claimant continued to be found disabled with the reevaluation in 2002 and 2003. The medical used in the 2003 decision showed the claimant had diagnoses including a depressive disorder, generalized anxiety disorder, and a panic disorder without agoraphobia.

\_\_\_\_ (Part VII. Continued)

8. The psychological report with the most recent evaluation in 2004 shows a diagnosis of generalized anxiety disorder, depressive disorder, NOS, and panic disorder with agoraphobia. The psychologist writes that she feels the claimant would benefit from psychological services and perhaps psychiatric care. The general physical completed in 2004 shows the major diagnoses as seizure disorder and DJD, The minor diagnoses is ATS and obesity. The claimant is not able to work full time at customary or like work and unable to perform other full time work. Work situations to be avoided: stress, heavy lifting, repeated hand motions. No duration of inability to work full time was listed but the doctor recommended neurologist and orthopedic evaluations.

9. 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).

10. There is no evidence to support the fact that the claimant's medical condition has improved since the most recent favorable medical decision that she was disabled.

#### **VIII. DECISION**

It is the finding of the State Hearing Officer that the claimant does meet the definition of disability. The Department is reversed in the decision to discontinue the claimant's medical card under the SSI-Related Medicaid Program. The action described in the notification letter dated May 28, 2004 will not be taken. The case will be reevaluated in February, 2006 with an undated social summary, general physical and psychological report.

#### **IX. RIGHT OF APPEAL**

See Attachment.

#### **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

