



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

September 22, 2008

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 10, 2008. Your hearing request was based on the Department of Health and Human Resources' denial of SSI-Related Medicaid.

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. 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 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, Chapter 12.2, A)

The information that was submitted at your hearing revealed that you did not meet the medical eligibility requirements to establish disability for SSI-Related Medicaid.

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

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lisa Tanner, Economic Service Worker

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

_____,
Claimant,

v.

Action Number: 08-BOR-1034

**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 September 22, 2008 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 April 10, 2008 on a timely appeal, filed February 1, 2008.

II. PROGRAM PURPOSE:

The Program entitled 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

_____, Claimant's witness

Lisa Tanner, Department Representative

Presiding at the Hearing was Todd Thornton, 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 medical eligibility criteria necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual, Chapter 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 Consent for Release of Information, Medical Information Request, Psychiatrist's Summary, Request for Psychological Evaluation and Report, and Physician's Summary, submitted November 15, 2007 and December 5, 2007
- D-2 Appointment Letter for Psychological Evaluation, dated December 5, 2007
- D-3 West Virginia Department of Health and Human Resources Medical Review Team (MRT) Transmittal Memorandum (DFA-RT-2) dated December 14, 2007 and additional medical information
- D-4 Notification of Denial dated January 25, 2008 (ES-RT-3 Cover Letter; DFA-RT-3M; DFA-FH-1)
- D-5 West Virginia Income Maintenance Manual, Chapter 12.2, A
- D-6 Physician's Summaries (DFA-RT-8a) submitted by [REDACTED] MD
- D-7 West Virginia Department of Health and Human Resources Medical Review Team (MRT) Transmittal Memorandum (DFA-RT-2) dated February 6, 2008 (Reconsideration of MRT Decision Referral) and additional medical information
- D-8 West Virginia Department of Health and Human Resources Mental Disability/Incapacity Evaluation (DFA-RT-3M) dated March 5, 2008
- D-9 Notification of Denial dated March 10, 2008 (ES-RT-3 Cover Letter)
- D-10 Physician's Summary and Comprehensive Psychiatric Evaluation, received March 12, 2008

VII. FINDINGS OF FACT:

- 1) The Claimant applied for SSI-Related Medicaid on November 15, 2007, according to testimony from the Department. The Department denied this application in writing on January 25, 2008 (Exhibit D-4) and denied a subsequent request for reconsideration (Exhibit D-7) on March 10, 2008 (Exhibit D-9). The Medical Review Team (MRT) summarized its finding in Mental Disability/Incapacity Evaluation forms (DFA-RT-3M) submitted on January 23, 2008 (Exhibit D-3) for the initial request and on March 5, 2008 (Exhibit D-8), stating that the expected length of incapacity or disability for the Claimant "does not meet 1yr [*sic*] disability criteria."

- 2) Exhibit D-3 contains a Social Summary completed on November 15, 2007. Section IX gives the Claimant's reasons for applying as follows:

BI POLAR [sic] – MAJOR DEPRESSION – ANXIETY AND
BOARDERLINE [sic] PERSONALITY DISORDER – HARD FOR
HER TO KEEP A JOB – HAS A LEARNING DISABILITY
DYSLEXIA –

- 3) Three Physician's Summaries were submitted to the Department on the Claimant's behalf – two from [REDACTED] MD (Exhibit D-6) and one from [REDACTED] MA (Exhibit D-7, page 3 of 10). Testimony from the Department indicated that one of the summaries submitted by Dr. [REDACTED] was actually submitted by [REDACTED] MD; however, the document appears to have been signed by [REDACTED]
- 4) The first summary (Exhibit D-6, page 1 of 2) states prognosis is "Good [with] medication and therapy," length of time incapacity/disability is expected to last is "6 mos. maximum," and describes the Claimant's employment limitation as "currently on home confinement [and] employment limitation are [sic] probable [sic] not to exceed 6 mos. maximum."
- 5) The second summary (Exhibit D-6, page 2 of 2) states prognosis is "poor," length of time incapacity/disability is expected to last is "chronic," and marked employment limitation with a zero.
- 6) The third summary (Exhibit D-7, page 3 of 10) lists the Claimant's prognosis as "Poor without con't [sic] intensive treatment [and] guarded with treatment," length of time incapacity/disability is expected to last as "1yr +," and employment limitation as [REDACTED] [sic] impulsiveness, risky behavior, [and] substance use adversely impact her employment attendance."
- 7) The Psychiatric Evaluation dated September 11, 2007 (Exhibit D-3, pages 10-12 of 19) includes the following:

Patient is a 46 year old, unmarried, white female. She was recently discharged from the FMRS MOTHER Program. Patient had a two year history of opioid dependence and got herself cleaned up. She has been sober for six months. She is currently experiencing sad mood, decreased energy level, lack of interest in activities, poor memory and concentration, and feelings of worthlessness and helplessness. She denies any suicidal or homicidal ideation or plan. Patient was given the Mood Disorder Questionnaire, and her answers were consistent with Bipolar Disorder, as she complains of having mood swings and irritability in the past.

The same document provides a diagnostic impression as follows:

DIAGNOSTIC IMPRESSION

Axis I: Bipolar Disorder
 Opioid Dependence, in remission
Axis II: None
Axis III: None
Axis IV: Moderate
Axis V: GAF 50

- 8) A Comprehensive Psychiatric Evaluation was completed on November 28, 2007 (Exhibit D-3, pages 18-19 of 19) by [REDACTED] MD. Under the heading of Personal/Family/Social History, Worthington noted:

The patient has been married once, divorced once. She has no children. She is educated through her bachelor's degree in social work. She also notes that she is dyslexic. She has worked, in the past, as a CNA, a social worker and in fast foot [sic]. She is currently unemployed, as she must remain at the house with her home confinement. She denies ever having attempted suicide.

Under the heading of Mental Status Exam, it is additionally noted:

The patient is an average height, average weight 46-year-old white female who appears essentially her stated age. She is dressed in clean, neat, casual clothes appropriate to the weather. Grooming and hygiene are good. Speech is of a regular rate, rhythm, tone and volume. There is no psychomotor agitation nor [sic] retardation. Eye contact is good. Intelligence is average, although not formally tested. She is oriented in all three spheres. Mood she describes "Stressful. Depressed. No energy. I do what I got [sic] to do because I have to." Her affect is tense, but she is pleasant and cooperative to the evaluation. Sleep is "Sleep's been off and on a couple nights. Sometimes, I wake up with night sweats." She reports initial but no intermittent insomnia, sleeping six and a half hours a night and not feeling rested upon arising. Appetite is "It's been fairly good since I got out of jail." She has lost 30 pounds over the last six weeks. She eats three meals a day and eats because it is there, to survive and she is bored. Hallucinations, in all forms, are denied. She denies any suicidal, homicidal or paranoid ideation or intent. Energy is "bad." Concentration is "fair." Insight and judgement [sic] appear to be good.

Under Diagnostic Impression, Dr. [REDACTED] noted:

DIAGNOSTIC IMPRESSION:

Axis I: 296.33 Major Depressive Episode, Recurrent, Severe without Psychotic Features
300.00 Anxiety Disorder NOS

Axis II: 301.83 Borderline Personality Disorder

Axis III: Healthy

Axis IV: **Psychosocial Stressors:** Moderate with recent release from jail, financial concerns, family issues and relationship concerns

Axis V: **Current GAF:** 65
Highest in the Past Year: Unknown

- 9) A Psychological Evaluation Report (Exhibit D-7, pages 4-9 of 10) was completed by [REDACTED] MA, on December 14, 2007. The Claimant stated to [REDACTED] "I have major depression, anxiety disorder, borderline personality disorder, and bipolar [sic]. I have dyslexia." Under the heading of Work Experience, the Claimant stated, in pertinent part:

The longest I've ever had a job in my life is a year. I feel I'm doing good and something clicks in my brain and I don't feel like going to work or doing my job.

Under the heading of Presenting Symptoms, Hornish noted:

The individual reports nervousness, anxiety, restlessness, not wanting to be around people, not paranoid but isolating herself, loss of appetite, loss of motivation, poor concentration, anhedonia, poor personal hygiene, changes in energy level, moods change rapidly, poor money management, lack of remorse about owing money she can't pay, poor self-esteem, relationship problems, and poor choices of partners (two are ex-felons).

With regard to Vocational History, it is noted, in pertinent part:

The individual has worked in the field of social work, as a certified nursing assistant, and in fast food restaurants. Her longest period of employment was 18 months. She's been employed most of her adult life, but sporadically. She was terminated from employment positions for not doing her job, calling off sick, and for not showing for work.

Hornish offered a diagnostic impression of the Claimant as follows:

DIAGNOSES:

Axis I: 296.80 Bipolar Disorder NOS

	304.00	Opioid Dependence in early full remission
Axis II:	301.83	Borderline Personality Disorder
Axis III:		Nothing significant reported.
Axis IV:		Psychosocial Stressors – problems with access to health care, problems related to interaction with the legal system.
Axis V:		Current GAF - 38

- 10) The Code of Federal Regulations, 20 CFR §404.1505 provides the following definition of disability:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

- 11) The West Virginia Income Maintenance Manual, Chapter 12.2, A, 1, defines disability for individuals age eighteen (18) or over as follows:

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 Code of Federal Regulations, 20 CFR §404.1520, outlines a five-step process for evaluating disability:

(4) The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (See paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (See paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). **If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §404.1509, or a combination of impairments that is severe and**

meets the duration requirement, we will find that you are not disabled. (See paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (See paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and §404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and §404.1560(c).) (emphasis added)

- 13) The Code of Federal Regulations, 20 CFR §404, Subpart P, Appendix 1 (Listing of Impairments) describes the required level *severity* for step two of the five-step process for affective disorders as follows:

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or

- f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
- a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractability; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace;
or
- 4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

- 14) The Code of Federal Regulations, 20 CFR §404.1509 explains the *duration* requirement of step two of the five-step process as:

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 the duration requirement.

VIII. CONCLUSIONS OF LAW:

- 1) The five-step process for evaluating disability from the Code of Federal Regulations, 20 CFR §404.1520, does not eliminate the Claimant at step one. Because she was not employed at the time of her evaluations, she could not be defined as 'not disabled' at this step.
- 2) The second step of the five-step process requires thresholds to be met in both severity and duration. Extensive documentation from the medical professionals who evaluated the Claimant confirms that the severity requirement is met. Although the issue was clouded by differing diagnoses, the Claimant met the requirements under Depressive syndrome in the Code of Federal Regulations, 20 CFR §404, Subpart P, Appendix 1, 12.04.
- 3) The duration requirement of the second step was not met. Three different answers were provided by medical professionals when asked to describe the length of time the Claimant's disability or incapacity was expected to last. One described the time frame as "chronic," but also described the employment limitations of the Claimant as zero. The two remaining responses regarding duration stated six months and over one year. With only one clear description of three meeting the duration requirement, the evidence is inconsistent and the Claimant has failed to meet the definition of disability. Without meeting the definition of disability, the Department was correct in its decision that the Claimant was not eligible for SSI-Related Medicaid.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Department's decision that the Claimant does not meet the medical eligibility requirements to be defined as disabled and the action of the Department to deny SSI-Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of September, 2008.

Todd Thornton
State Hearing Officer