



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1400 Virginia Street  
Oak Hill, WV 25901

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 26, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 7, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your SSI-Related Medicaid based on a disability determination by the State Medical Review Team.

In arriving at a decision, the State Hearings 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 is based on current policy and regulations. Some of these regulations state 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 (West Virginia Income Maintenance Manual Section 12.2 A).

The information which was submitted at your hearing revealed that you do have a listed disabling condition that is expected to last for at least 12 months that prevents you from engaging in substantial gainful employment as set forth in policy.

It is the decision of the State Hearings Officer to **reverse** the decision of the Department to terminate your SSI-Related Medicaid.

Sincerely,

Kristi Logan  
State Hearings Officer  
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review  
Gayla Adkins, Family Support Supervisor

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

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

**Action Number: 08-BOR-1343**

**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 August 7, 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 August 7, 2008 on a timely appeal, filed April 24, 2008.

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  
\_\_\_\_\_, Family Support Specialist

Presiding at the Hearing was Kristi Logan, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department's decision to terminate Claimant's SSI-Related Medicaid was correct.

**V. APPLICABLE POLICY:**

West Virginia Income Maintenance Policy Manual , Section 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 Medical Review Team Disability/Incapacity Evaluation Form (ES-RT-3)
- D-2 Notification Letter dated April 3, 2008
- D-3 Hearing Request received April 24, 2008
- D-4 Form IG-BR-29
- D-5 Hearing Appointment Letter
- D-6 West Virginia Income Maintenance Manual § 12.10
- D-7 Medical Review Team Packet
- D-8 Department's Case Summary

**Claimants' Exhibits:**

- C-1 Medication List as Prescribed by Dr. [REDACTED]
- C-2 Correspondence from \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, and \_\_\_\_\_
- C-3 Discharge Summary from [REDACTED] General Hospital

**VII. FINDINGS OF FACT:**

- 1) Claimant had been receiving SSI-Related Medicaid based on a disability determination by the State Medical Review Team (MRT). Claimant was due for her annual re-evaluation in December 2007 and her medical records for submitted to MRT for review. MRT determined that Claimant was no longer disabled in their decision received in January 2008. A reconsideration of their decision was requested in March 2008 based on additional medical information. MRT's decision in April 2008 was again that Claimant was not disabled (D-8).

- 2) The disability/incapacity evaluation form received by MRT read in part (D-1):

Review of clinical records does not reveal the presence of a covered disability condition expected to last one year or longer. The above does not qualify for MAO-D 1 yr. (Medicaid based on disability)

- 3) Claimant testified that she has migraines and depression. She was recently hospitalized for this depression and was told by the attending psychiatrist that she was bipolar. She also has stomach and back problems. Claimant takes Cymbalta and Welbutrin for depression, Carafate, Phenegran, Reglan, and Prevacid for her stomach; Topamax and Treximet for migraines; Lasix and Toprol for her heart and a Flector Patch for her back. Her primary physician is Dr. [REDACTED] who prescribes her medications. She is to start seeing Dr. Jafary, a psychiatrist, the following week for her depression/bipolar.

Claimant has a Bachelor's degree in Science and has worked previously as a caregiver and medical assistant. She last worked in August 2007 but had to leave due to her medical problems.

- 4) The general physical form (DFA-RT-5) as completed on February 26, 2008 by Dr. [REDACTED] lists the following pertinent information (D-7):

Diagnosis: Migraines, GERD, Depression and Peripheral Vascular Disease (PVD)

Applicant able to work full-time at customary occupation: Unknown

Applicant able to perform other full-time work: Unknown

What work situations, if any, should be avoided: Unknown

Duration of inability to work: Unknown

- 5) A psychological evaluation was completed on November 26, 2007 by [REDACTED] Licensed Psychologist. Ms. [REDACTED] diagnosed Claimant with Major Depressive Disorder, Generalized Anxiety Disorder and Panic Disorder without Agoraphobia (D-7).

- 6) A Physician's Summary form (DFA-RT-8a) was completed by Dr. [REDACTED] (D-7). It read in part:

Date of Last Patient Contact: Feb 2008

Diagnosis: Migraines, depression, PVD

Prognosis: Guarded

Length of Time Incapacity/Disability Expected to Last: Unknown

Employment Limitation: Unknown

- 7) A Physician's Summary for was also completed by Dr. [REDACTED] of [REDACTED] Center (D-7). I read in part:

Date of Last Patient Contact: 7-10-07

Diagnosis: Depression, migraine headaches

Prognosis: Good

Length of Time Incapacity/Disability Expected to Last: Should have returned to work within 6 mos. of initial treatment

Employment Limitation: Left blank

- 8) West Virginia Income Maintenance Manual § 12.2 A states:

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.

- 9) 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 § 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 dual functional capacity, age, education, and past work experience? (20 CFR ' 404.1520f)

- 10) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations:

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 duration requirement (404.1509). Your impairments(s) must be severe and meet the duration requirement before we can find you disabled. If you do not have any impairments or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience. (404.1520)

- 11) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations:

Impairment must result from anatomical, physiological or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms and laboratory findings, not only by your statement of symptoms. (§ 404.1508)

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

- 1) Claimant is not in a substantial gainful activity as defined in 20 CFR ' 404.1510.

- 2) Claimant's physician Dr. [REDACTED] indicated that the length of time her condition is expected to last is unknown.
- 3) Claimant has PVD which is a listed impairment as set forth in 20 CFR § 404, Sub Part P, App 1.
- 4) Claimant's previous MRT packet that had first approved her for disability could not be located. The medical documentation provided failed to prove that Claimant's condition(s) had improved, which would have supported the decision that Claimant was no longer disabled. Based on the medical documentation provided, Claimant meets the disability guidelines as set forth in 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations by having a listed impairment. Claimant continues to remain eligible for SSI-Related Medicaid.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the decision of the Department to terminate Claimant's SSI-Related Medicaid. Claimant's reevaluation will be due December 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 26<sup>th</sup> Day of September, 2008.**

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**Kristi Logan**  
**State Hearing Officer**