



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

November 17, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 13, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your SSI-Related Medicaid due to a disability determination by the state Medical Review Team.

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 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 submitted at your hearing revealed that you continue to meet the medical criteria for SSI-Related Medicaid.

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

Sincerely,

Kristi Logan
State Hearing Officer
Member, State Board of Review

Cc: Erika Young, Chairman, Board of Review
Susan Godby, Economic Service Supervisor

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

_____,
Claimant,

v.

Action Number: 08-BOR-2025

**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 November 13, 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 November 13, 2008 on a timely appeal, filed August 25, 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
_____, Claimant's Friend

Susan Godby, Economic Service Supervisor

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 or not.

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 Form IG-BR-29
- D-2 Notification Letter dated August 18, 2008
- D-3 West Virginia Income Maintenance Manual § 12.2
- D-4 Medical Review Team Decision
- D-5 Medical Review Team Packet
- D-6 Department's Case Summary

Claimants' Exhibits:

- C-1 Correspondence from _____
- C-2 Consultation/Referral Form from _____
- C-3 Request for a Hearing by Administrative Law Judge for SSI Denial
- C-4 Medical and Job Worksheet for SSI Application
- C-5 Application Summary for SSI

VII. FINDINGS OF FACT:

- 1) Claimant had been receiving SSI-Related Medicaid based on a disability determination by the state Medical Review Team (MRT) since July 2007. Claimant was re-evaluated for medical eligibility for the program in June 2008. MRT's decision dated August 15, 2008 read in part (D-5):

Client is not mentally disabled. Ct. [client] is dx [diagnosed] MDD [major depressive disorder]. Per 15a no employment limitations or period incapacity/disability indicated.

Client is not disabled. No additional clinical information documented that would qualify as a covered disability condition. The above is not qualified for MAO-D, 1 yr. (SSI-Related Medicaid).

- 2) Claimant testified that she has bipolar disorder, major depression, degenerative disc disease, myofascial pain syndrome, chronic obstructive pulmonary disease (COPD), torn cartilage and arthritis of the right knee. She is currently on Lamictal and Prozac for depression, Advair and Albuterol for the COPD and Trazadone to help her sleep. She has a hard time concentrating because of the depression and cannot walk or stand for long periods due to her knee.

Claimant last worked in April 2007. Her customary occupation was a retail cashier. She graduated from high school. Claimant has been denied SSI and has reapplied.

- 3) Claimant sees [REDACTED], PA-C at [REDACTED] for her depression. Form DFA-RT-15a as completed by Ms. [REDACTED] reads (D-5):

Date of Last Patient Contact: June 25, 2008
Diagnosis: Major Depressive Disorder
Prognosis: Fair
Length of Time Incapacity/Disability is Expected to Last: N/A
Employment Limitation: N/A

- 4) Claimant presented a letter from [REDACTED] dated September 17, 2008 which reads in pertinent parts (C-1):

[REDACTED] suffers from bipolar disorder, anserine bursitis, depression, anxiety, cervical degenerative joint/degenerative disc disease, and myofascial pain syndrome. Given the nature of her illnesses and the extent of her symptoms, [REDACTED] is unable to work. I do not believe that Ms. [REDACTED] would be able to maintain employment given her diagnoses.

- 5) Medical records from [REDACTED] submitted at Claimant's previous MRT evaluation state in pertinent parts (D-5, Form DFA-RT-15a):

Date of Last Patient Contact: May 14, 2007
Diagnosis: Major Depressive Disorder, Dysthymic Disorder, Generalized Anxiety Disorder
Prognosis: Good
Length of Time Incapacity/Disability is Expected to Last: More than 12 months
Employment Limitation: Patient was doing well at last visit. However due to the nature of illness, condition could change unexpectedly. At this time, stable.

- 6) 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.

- 7) The Federal definition of disability is found in 20 CFR ' 404.1505 states:

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

- 8) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations states:

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)

- 9) 20 CFR ' 404.1508, 404.1509, & 404.1520 Code of Federal regulations states:

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)

- 10) 20 CFR ' 404.1594 (b)(1) Code of Federal Regulations states:

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) Claimant is not in a substantial gainful activity as defined in policy.
- 2) Claimant has a condition that is expected to last twelve (12) months as indicated by _____.
- 3) Claimant has a listed impairment of a depressive disorder under federal guidelines. Claimant was approved for mental disability by MRT in 2007. Claimant's depressive disorder has not only existed since the approval in 2007 but continues according to recent medical documentation. There is no evidence of medical improvement and no basis for termination of SSI-Related Medicaid benefits.
- 4) The Department has incorrectly terminated Claimant's 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. A MRT re-evaluation will be due in June 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 17th Day of November, 2008.

**Kristi Logan
State Hearing Officer**