



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

January 18, 2008

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 19, 2007. Your hearing request was based on the Department of Health and Human Resources' action to terminate your Medicaid benefits based on failure to meet disability criteria.

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 can be expected to result in death or last for a continuous period of not less than 12 months. [West Virginia Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing revealed that you continue to meet the criteria necessary to establish a disability for Medicaid purposes.

It is the decision of the State Hearing Officer to **reverse** the action of the Department in terminating your SSI-Related Medicaid benefits. Medicaid benefits should be reinstated retroactively to November, 2007.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Lillian Brown, ESS, DHHR

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

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

**Action Number: 07-BOR-2243**

**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 January 18, 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 19, 2007 on a timely appeal filed October 5, 2007.

It should be noted that the Claimant's benefits have not been continued pending a hearing decision.

**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  
Lillian Brown, Economic Services Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, 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 Agency was correct in its action to terminate the Claimant's SSI-Related Medicaid based on failure to meet disability criteria.

### **V. APPLICABLE POLICY:**

West Virginia Income Maintenance Manual Section 12.2(A)  
20 CFR ' 404.1505 - 404.1545, Code of Federal Regulations

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

#### **Department's Exhibits:**

- D-1 Social Summary dated August 30, 2007
- D-2 Psychological Evaluation
- D-3 ES-RT-3
- D-4 DFA-RT-3M
- D-5 Notice of Decision dated October 1, 2007
- D-6 Medical records from 2006 submittal to the MRT (entered subsequent to hearing)

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

- 1) The Claimant was a recipient of SSI-Related Medicaid benefits based on a mental disability and was due for medical reevaluation in August, 2007. She had been approved for Medicaid for intermittent periods beginning in October, 2001. She had been a continuous recipient since 2005.
- 2) At the time of reevaluation, the Medical Review Team, hereinafter MRT, requested medical reports from the previous MRT submittal, a current report from the attending physician-psychiatrist and an updated social summary.
- 3) The Department sent the requested information to the MRT and the MRT determined that the Claimant is not mentally or physically disabled.

- 4) The Department sent the Claimant a Notice of Decision dated October 1, 2007 (D-5) advising her of the MRT denial.
- 5) The Claimant, who is 52 years old, completed the seventh grade and received a General Equivalency Diploma. She testified that she suffers from bone/joint pain, however, her physician will not prescribe pain medication because she previously overdosed in a suicide attempt. Exhibit D-2, a Psychological Evaluation completed on June 29, 2007 by Dr. [REDACTED] indicates that the Claimant has been diagnosed with Depressive Disorder and Pain Disorder with both physical and psychological components. The Claimant testified that she cannot sleep at night because of pain and feels as though she is "bruised for no reason." She testified that she has been diagnosed with osteopenia, a precursor to osteoporosis. The Claimant testified she last worked as a care giver from 2002 through 2005, but quit that job due to problems with her nerves. Records indicate that she also previously worked as a fast food restaurant cook and a motel housekeeper.
- 6) Exhibit D-2 includes a Mental Residual Functional Capacity Assessment of Work-Related Activities dated July 20, 2007. The assessment was completed by Dr. [REDACTED] and indicates that the Claimant has moderate limitations in several work-related mental functions. Moderate is defined as "a significant limitation, generally affecting the individual more than occasionally less than frequently, between mild and marked." The Claimant scored in the mild range in some areas, but her ability was rated as moderate in the following areas:
  - Understand and remember detailed instructions.
  - Carry out detailed instructions.
  - Exercise judgment or make simple work-related decisions.
  - Sustaining attention and concentration for extended periods.
  - Maintaining regular attendance and punctuality.
  - Completing a normal workday and workweek without interruptions from psychological symptoms and performing at a consistent pace without an unreasonable number of length of work breaks.
  - Interacting appropriately with the public.
  - Responding appropriately to direction and criticism from supervisors.
  - Working in coordination with others without being distracted by them.
  - Working in coordination with others without unduly distracting them.
  - Relating predictably in social situations in the workplace without exhibiting behavioral extremes.
  - Demonstrating reliability.
  - Ability to respond to changes in the work setting or work process.
  - Ability to be aware of normal hazards and take appropriate precautions.
  - Carrying out an ordinary work routine without special supervision.
  - Setting realistic goals and making plans independently of others.
  - Traveling independently in unfamiliar places.
  - Ability to tolerate ordinary work stress.

The psychologist wrote that the patient has had a long history of major depression, ongoing depression and pain disorder. Notes indicate that the Claimant's work history "does not suggest consistent ability to function with much self-direction and independence. Attention and memory are also limited." The psychologist noted that the Claimant has alleged the

inability to work since September 2005 and the period under consideration extends from September 2005 to the present. The psychologist checked “yes” to the question “Do you feel that the impairments and limitations which you have identified have probably existed at their current level of severity since 09/01/05, the alleged onset date?”

A Medical Summary on the document entitled Psychiatric Review Technique (D-2) indicates that the Claimant has depressive syndrome characterized by anhedonia or pervasive loss of interest in almost all activities, sleep disturbance, decreased energy, feelings of guilt or worthlessness, and difficulty concentrating or thinking. The Psychological Evaluation describes the Claimant’s psychological history, which includes a hospitalization at age 43 for “threatening suicide and homicide.” The document indicates the Claimant was hospitalized at age 47 for attempted suicide after ingesting 29 Flexeril tablets.

- 7) The hearing record remained open so that the Department could provide additional medical documentation from the Claimant’s record.
- 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 the Social Security Administration 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, Code of Federal Regulations, Section 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)
- 10) 20 CFR ' 404.1508, 404.1509, & 404.1520:

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:

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)

- 12) 20 CFR ' 404.1594 (b)(1):

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) The Claimant is not performing substantial gainful activity as defined in 20 CFR ' 404.1510.
- 2) The Claimant has a severe mental impairment which her psychologist believes has existed at its current level of severity since September, 2005, thus meeting the duration requirement of at least one year.
- 3) The Claimant has a listed impairment under 20 CFR Part 404, Sub Part P, App. 1. This impairment is depressive syndrome characterized by anhedonia or pervasive loss of interest in almost all activities, sleep disturbance, decreased energy, feelings of guilt or worthlessness and difficulty concentrating or thinking.
- 4) As the Claimant has a listed impairment under federal guidelines, she continues to meet disability criteria for the SSI-Related Medicaid Program. In addition, she has been a recipient of SSI-Related Medicaid since 2005 as determined by the Medical Review Team, and her current psychologist believes that her mental disorder has existed at its current level of severity since 2005. Since the Medical Review Team has considered the Claimant disabled since 2005- and her condition remains unchanged- there is no evidence of medical improvement and no basis for termination of SSI-Related Medicaid benefits.
- 5) The Department acted incorrectly in terminating the Claimant's Medicaid benefits.

**IX. DECISION:**

It is the ruling of the State Hearing Officer to **reverse** the action of the Department in terminating the Claimant's SSI-Related Medicaid. Medicaid benefits should be restored retroactively to November, 2007. The case should be medically reevaluated in August, 2008.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 18th Day of January, 2008.**

---

**Pamela L. Hinzman**  
**State Hearing Officer**