



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

November 13, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 31, 2008. 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 reveals that you have shown no medical improvement and 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 July 2008.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Nancy Wooddell, ESW, DHHR

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

_____,
Claimant,

Action Number: 08-BOR-2277

**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 October 31, 2008 on a timely appeal filed October 8, 2008

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
Nancy Wooddell, Economic Service Worker, 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 Medical Review Team decisions of May 12, 2008 and October 3, 2008 and denial letters dated May 14, 2008 and October 3, 2008
- D-2 Medical Review Team transmittals and medical records
 - A. MRT submittal dated January 29, 2008
 - B. MRT submittal dated April 10, 2008
 - C. Request for reconsideration dated August 15, 2008
 - D. MRT submittal with new medical information dated August 19, 2008
- D-3 West Virginia Income Maintenance Manual Sections 12.3 and 12.11
- D-4 Hearing record information

VII. FINDINGS OF FACT:

- 1) The Claimant, a recipient of SSI-Related Medicaid benefits since February 2005, was due for a medical reevaluation in February 2008 to determine whether she continues to meet disability criteria. It should be noted that the previous decision by the State Medical Review Team, hereinafter MRT, received by the Department on February 16, 2007 (D-2, B) states that the Claimant has been determined disabled as she has a medically determined, listed impairment which significantly limits her ability to perform basic work activity. The Claimant had been diagnosed with lumbago on a general physical examination report completed on November 5, 2007 by Dr. [REDACTED] (D-2, B). Dr. [REDACTED] 2007 examination report states that the Claimant is unable to perform work in her customary

occupation (nurse's aide) as she cannot stand for long periods of time and cannot bend. Dr. [REDACTED] noted that the Claimant could possibly perform other work, however her back becomes sore if she sits for any length of time. The doctor wrote that work situations such as lifting, bending and standing/sitting for long periods of time should be avoided. She indicated that the Claimant's inability to work full-time is "likely to be permanent."

- 2) At the time of reevaluation, the MRT requested medical reports from the 2007 MRT submittal, a current report from the attending physician, an updated Social Summary and a general physical examination report. The general physical examination report – completed by Dr. [REDACTED] on January 27, 2008 (D-2, A) – states that the Claimant has lumbago and cervicologia and would be unable to work full-time at her previous occupation as a nurse's aide. The report states that the physician is "unsure" of the duration of the Claimant's disability and that she could "possibly" perform other work, however it would depend on her endurance at the given job.
- 3) The Department sent the requested information to the MRT on January 29, 2008 (D-2, A) and the MRT ordered that a psychiatric evaluation be completed for the Claimant. The Claimant underwent a psychiatric evaluation with [REDACTED], the results of which were submitted to the MRT on April 10, 2008 (D-2, B).
- 4) The Department received a decision from the MRT on May 12, 2008 (D-1) indicating that the Claimant is not mentally or physically disabled. In regard to a mental disability, the decision states "deny Ct [sic] is dxed [sic] Learning Disorder NOS. She displays non severe functional limits." The MRT stated the following in regard to the Claimant's physical limitations: "Chronic back pain with no neurologic changes or muscle atrophy. The above does not qualify for MAO-D."
- 5) The Claimant was originally notified of the proposed Medicaid termination in a Notice of Decision dated May 12, 2008 (D-1). The worker submitted additional medical information to the MRT for reconsideration (D-2, C), however, the MRT findings remained unchanged. A final termination notice was sent to the Claimant on October 3, 2008 (D-1).
- 6) The Claimant, who is 39 years old, testified that her medical condition has not improved and she does not understand why her Medicaid was terminated. She stated that two of her medications cost a total of \$790 and she has stopped buying some of her prescriptions as she cannot pay for them. The Claimant testified that her main health concerns are related to back pain and she was last employed as a caretaker for the elderly in 2001.
- 7) West Virginia Income Maintenance Manual Section 12.2 (A) states the definition of disability for Medicaid purposes is the same as the definition 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.

- 8) 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, Section 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 Section 404.1520f)

- 9) 20 CFR Sections 404.1508, 404.1509 and 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)

- 10) 20 CFR Sections 404.1508, 404.1509 and 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)

- 11) 20 CFR Section 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) Federal regulations governing disability determinations indicate that medical improvement is any decrease in the medical severity of an individual's impairment which was present at the time of the most recent favorable disability decision. 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 the impairment(s).
- 2) The Claimant was determined disabled by the Medical Review Team in February 2005. In February 2007, the MRT determined that the Claimant continued to meet severe impairment and duration requirements as defined in Federal disability determination regulations.

The Claimant testified during the hearing that her medical condition has not improved. In addition, the Claimant's examining physician completed a medical evaluation in January 2008 containing an essentially identical condition assessment as was cited in the Claimant's November 2007 physical examination report.

- 3) The MRT found the Claimant disabled in 2007 and failed to show how the Claimant's medical condition has decreased in severity since the 2007 disability determination. Therefore, the Department's action in terminating the Claimant's SSI-Medicaid is without merit.

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 July 2008. The case should be medically reevaluated in June 2009.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of November, 2008.

**Pamela L. Hinzman
State Hearing Officer**