



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
4190 W Washington St.  
Charleston, WV 25313  
304-746-2360 Ext 2227

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

June 12, 2008

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

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 15, 2008. Your hearing request was based on the Department of Health and Human Resources' action to deny your Medicaid re-evaluation 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. [WV Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing revealed that you do 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 denying your February 2, 2008 application for SSI-Related Medicaid.

Sincerely,

Jennifer Butcher  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Clara Thomas IM, DHHR

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

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

**v.**

**Action Number: 08-BOR-846**

**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 May 15, 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 May 15, 2008 on a timely appeal filed February 12, 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  
Clara Thomas, IM, DHHR

Presiding at the hearing was Jennifer Butcher, 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 deny the Claimant's re-evaluation for 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, and 20 CFR 404.1594 Code of Federal Regulations

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

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

- D-1 Notice of Decision dated February 2, 2008
- D-2 West Virginia Income Maintenance Manual Section 12.2(A) and 16.9
- D-3 Medical Review Team decision, Social Summary and medical records

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

- 1) The Claimant completed a review of the Social Summary for SSI-Related Medicaid on August 14, 2007 (Exhibit D-3).
- 2) The Medical Review Team, hereinafter MRT, had requested a social summary, physical exam, provided by [REDACTED] Certified Family Nurse Practitioner hereinafter NP and psychiatric evaluation along with the DFA-RT-15a; Psychiatrist' summary, provided by [REDACTED] Masters in the Science of Nursing, and Advanced Practice Registered Nurse(Exhibit D-3).
- 3) MRT reviewed the Claimant's medical documentation and determined that the Claimant is not disabled in a decision issued stamped dated in by the Department in February 2008, (Exhibit D-3). The decision states:

ES-RT-3, dated 9/14/07, indicates; "No physical disabilities noted. The above does not qualify for MAO-D." The DFA-RT-3M dated 12/26/ 2007, indicates; "deny ct [sic] is dxed [sic] Bipolar D/O. Social Phobia with personality D/O NOS. He exhibits moderate functional limits which would not prevent work activity."
- 4) The Department sent the Claimant a Notice of Decision (Exhibit D-1) dated February 2, 2008 advising him of the application denial.
- 5) The Claimant testified that he had a broken back two years ago and he can not pick anything more than three pounds he has trouble bending over. Also he had heart surgery in October 2006.

- 6) West Virginia Income Maintenance Manual ' 12.2 (A) (Exhibit D-2) 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.

- 7) 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 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)

- 8) The Claimant stated he was currently unemployed; Social Summary dated August 13, 2007, (Exhibit D-3).
- 9) According to Social Summary dated August 13, 2007, (Exhibit D-3) Claimant's last gainful employment was a two week job for a Lumber company in 1997. Prior to that, he worked for a trucking company.
- 10) The report of general physical examination dated August 14, 2007 by NP [REDACTED] shows diagnoses of seizure disorder, chronic pain, general anxiety, hypertension, heart disease, and arthritis. NP [REDACTED] indicated that Claimant is unable to work at his previous occupation due to his inability to sit, stand for prolong periods of time and he is unable to perform any other full time employment because of his social anxiety disorder which prevents him from being around others. She also notes that Claimant's activity is limited by pain. She indicates that his disability is permanent.
- 11) Upon request from the MRT, a psychiatric examination was performed at [REDACTED] Health services by [REDACTED] (Exhibit D-3) dated October 9, 2007. Her diagnoses were listed as Bipolar Disorder, Social Phobia, and Personality Disorder,

NOS. Ms [REDACTED] did not make a finding concerning Claimant's employment limitations except to say that he would have difficulties maintaining employment.

- 12) Medical evidence does not support a finding that Claimant's impairments meet the criteria in the listing of impairments, but the report from NP [REDACTED] in addition to Claimant's testimony concerning his pain and inability to lift more than three pounds establishes the Claimant is limited to sedentary work and is thus unable to perform his past work.
- 13) Claimant is 43 years old age and does not have a high school diploma. Claimant has not been employed for approximately 11 years. His work history appears to have been of unskilled to semi skilled labor.
- 14) While an individual of the Claimant's age might normally be expected to adjust to other work, Claimant is limited by his education and work experience, when combined with his physical limitations and psychiatric diagnoses of Bipolar Disorder and Social Phobia prevent the Claimant from engaging in substantial gainful employment.

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

- 1) The Claimant is not performing substantial gainful activity as defined in 20 CFR section 404.1510 of the Federal Regulations.
- 2) Evidence show the Claimant is unable to engage in any substantial employment due to a combination of physical and mental impairments that have lasted and be expected to last up to 12 months or longer.

#### **IX. DECISION:**

It is the ruling of the State Hearing Officer to reverse the proposal of the Department to terminate the Claimant's active case for SSI-Related Medicaid. This case should be re evaluated in February 2009 along with an updated social summary, psychiatric evaluation and a physician summary.

#### **X. RIGHT OF APPEAL:**

See Attachment

#### **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 12th Day of June, 2008.**

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**Jennifer Butcher**  
**State Hearing Officer**