



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Joe Manchin III  
Governor

Patsy A. Hardy, FACHE, MSN, MBA  
Cabinet Secretary

October 23, 2009

-----  
-----  
-----

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 11, 2009. Your hearing request was based on the Department of Health and Human Resources' determination that you are no longer disabled for purposes of the SSI-Related Medicaid Program.

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 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. [WV Income Maintenance Manual Section 12.2(A)]

Information submitted at your hearing reveals that you do not meet the criteria necessary to establish a disability for purposes of the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to **uphold** the Department's proposal to terminate your SSI-Related Medicaid based on an unfavorable disability evaluation.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
Kathy Fisher, ESW, DHHR

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

-----,

**Claimant,**

v.

**Action Number: 09-BOR-852**

**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 October 23, 2009 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 originally scheduled to convene on June 30, 2009 but was continued to permit a reevaluation by the Medical Review Team. This hearing was convened on September 11, 2009 on a timely appeal filed March 11, 2009.

**II. PROGRAM PURPOSE:**

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  
Kathy Fisher, Economic Services Worker (ESW), DHHR

All parties participated telephonically.

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether or not the Claimant meets the medical eligibility requirement necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

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

West Virginia Income Maintenance 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 WVDHHR Mental Disability/Incapacity Evaluation (Reconsideration) with supporting documentation – completed by MRT on 7/10/09
- D-2 WVDHHR Mental Disability/Incapacity Evaluation (Reevaluation) with supporting documentation - completed by MRT on 1/29/09
- D-3 WVDHHR Mental Disability/Incapacity Evaluation (New Application) with supporting documentation – completed by MRT on 2/19/08
- D-4 WV Income Maintenance Manual, Chapter 12.2 (Definitions of Disability and Blindness)

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

- 1) The Claimant was approved for SSI-Related Medicaid resulting from a disability evaluation by the Medical Review Team, hereinafter MRT, on February 19, 2008 (Exhibit D-3). The MRT noted on the Mental Disability/Incapacity Evaluation (DFA-RT-3M) that the Claimant's impairment(s) meet or equal the listing of impairments, and therefore determined the Claimant is mentally disabled. The Claimant's mental disability, according to the MRT, was scheduled for reevaluation no later than October 2008. The MRT indicated that, in addition to the medical reports from the last MRT evaluation, an updated Social Summary and a DFART-15a would be required. This form was not identified by name but appears to be a Psychiatrist Summary (DFA-RT-15a, see below).
- 2) On or about September 10, 2009, a Social Summary was completed and medical documentation was requested from the Claimant's physician for MRT's reevaluation. The Department worker submitted a psychological evaluation dated October 25, 2007 and Progress Notes date 9/11/08, however, the MRT requested that a DFA-RT-15a be completed. A Psychiatrist Summary (OFS-RT-15a) was completed and resubmitted to MRT with additional Progress Notes dated 11/13/08. The physician noted on the Psychiatrist Summary – "Diagnosis: Mood & Personality Disorder" and the prognosis is noted to be "Fair to Good, with treatment." The length of incapacity/disability included the following statement – "Has not been determined to be disabled or incapacitated." It should be noted that this is not the same psychiatrist who was treating the Claimant when she was originally found to be disabled.

In response to the information provided to the MRT, a (DFA-RT-3M) Mental Disability/Incapacity Evaluation form was completed on January 29, 2009 by the MRT which indicates the Claimant is not mentally disabled. Section IV.B. notes that the Claimant does not have a medically determinable impairment or combination of impairments which significantly limit her ability to perform basic work activity; and Section IV.E. states – “Deny Ct [client] is dxed [diagnosed] Mood and Personality D/O [Disorder]. 15A indicates Ct has not been determined to be disabled or incapacitated.”

- 3) The Claimant requested a hearing and a reconsideration of her disability by the MRT (Exhibit D-1). Included in the reconsideration is the October 24, 2007 Psychological Evaluation, Progress Notes dated 9/11/08, 11/13/08, 1/8/09, 3/12/09 and 5/14/09, as well as an Initial Treatment Strategy from [REDACTED] dated 3/31/09. The MRT responded to this information in a Mental Disability/Incapacity Evaluation (DFA-RT-3M) form dated 7/10/09 and again noted that the Claimant does not present a medically determinable impairment or combination of impairments which significantly limit her ability to perform basic work activity. In section IV.E., the MRT states – “Deny Ct is dxed mood and personality d/o. She exhibits moderate functional limits which would not prevent work activity.”
- 4) The Claimant testified that she no longer sees the psychiatrist (Dr. [REDACTED]) who completed the October 2007 psychological evaluation. The Claimant purported that she is suicidal, that she wants to cut and mutilate her body, and that she has been hospitalized for her mental condition.
- 5) West Virginia Income Maintenance Manual § 12.2 (A):  
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.
- 6) 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)

- 7) 20 CFR § 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)

- 8) 20 CFR § 404.1508, 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) Regulations that govern the SSI-Related Medicaid Program require that an eligible individual must have a severe impairment(s) and meet the duration requirement in order for there to be a disability finding. 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.
- 2) The Claimant is not currently employed (not performing substantial gainful activity), however, the clinical evidence submitted to the MRT fails to demonstrate that the Claimant has a severe impairment. More specifically, the Claimant's treating psychiatrist noted that the Claimant has not been determined disabled or incapacitated and failed to list any employment limitations. While the Claimant presents a diagnosis of mood and personality disorder, she exhibits moderate level functioning which would not prevent work activity.
- 3) Based on the clinical documentation, the Claimant is not disabled pursuant to the SSI-Related Medicaid requirements.

**IX. DECISION:**

It is the ruling of the State Hearing Officer to **uphold** the Department's proposal to terminate the Claimant's SSI-Related Medicaid benefits based on a disability.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 23<sup>rd</sup> Day of October 2009.**

---

**Thomas E. Arnett  
State Hearing Officer**