



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 10, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 19, 2009. Your hearing request was based on the Department of Health and Human Resources' denial of SSI-Related Medicaid.

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 SSI-Related Medicaid 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. (20 CFR §404.1505)

The information that was submitted at your hearing revealed that you met the medical eligibility requirements to establish disability for SSI-Related Medicaid.

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

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lisa Tanner, Economic Service Worker

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

-----,

Claimant,

v.

Action Number: 09-BOR-858

**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 August 10, 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 convened on May 19, 2009 on a timely appeal, filed March 3, 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
Lisa Tanner, Department Representative

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Claimant meets the medical eligibility criteria necessary to qualify as a disabled individual for purposes of the SSI-Related Medicaid Program.

V. APPLICABLE POLICY:

20 CFR §404.1505 - §404.1545; 20 CFR §404.1594

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Social Summary Outline
- D-2 Release; Medical Information Request; Physician's Summary to Dr. [REDACTED]
- D-3 Medical Records from Dr. [REDACTED]
- D-4 Release; Medical Information Request; Physician's Summary to Dr. [REDACTED]
- D-5 General Physical and Physician's Summary from Dr. [REDACTED]
- D-6 Psychologist's Summary and Psychological Evaluation Report from [REDACTED] MA
- D-7 West Virginia Department of Health and Human Resources Medical Review Team Transmittal Memorandum dated April 24, 2008
- D-8 West Virginia Department of Health and Human Resources Mental Disability/Incapacity Evaluation dated April 28, 2008
- D-9 Notification of Denial dated June 3, 2008
- D-10 West Virginia Income Maintenance Manual, Chapter 12.2.A.1
- D-11 West Virginia Income Maintenance Manual, Chapter 12.3.B.1
- D-12 West Virginia Income Maintenance Manual, Chapter 12.12.C
- D-13 Case Comments from December 2008
- D-14 West Virginia Department of Health and Human Resources Medical Review Team Transmittal Memorandum dated January 9, 2009
- D-15 Records from [REDACTED] Hospital
- D-16 West Virginia Department of Health and Human Resources Mental Disability/Incapacity Evaluation dated January 12, 2009
- D-17 Notification of Denial dated February 13, 2009

Claimant's Exhibits:

- C-1 Records from [REDACTED] Hospital
- C-2 Letter from [REDACTED] Attorney for the Claimant

VII. FINDINGS OF FACT:

- 1) The Claimant applied for SSI-Related Medicaid on March 12, 2008, completed a Social Summary with her Department worker (Exhibit D-1), and requested medical records (Exhibits D-2 and D-4). Medical information (Exhibit D-3), a General Physical from Dr. [REDACTED] (Exhibit D-5), and a Psychologist's Summary and Psychological Evaluation Report from [REDACTED] MA (Exhibit D-6) were returned for submission to the Medical Review Team (MRT) for evaluation. The MRT responded with a decision that the Claimant was not disabled (Exhibit D-8), and the Department issued notification of denial for SSI-Related Medicaid (Exhibit D-9) to the Claimant, on or about June 3, 2008.

- 2) A request for reconsideration of the decision of the MRT was submitted (Exhibit D-14) with additional medical records (Exhibit D-15). The MRT again responded with a determination that the Claimant was not disabled (Exhibit D-16). Notification of denial for SSI-Related Medicaid (Exhibit D-17) was mailed to the Claimant, on or about February 13, 2009.
- 3) Exhibit D-1 noted that the Claimant's work history ceased with an injury in 2004. She was noted to be supported by family since that time.
- 4) Exhibit D-5 contains a Physician's Summary completed by Dr. [REDACTED]. In this summary, Dr. [REDACTED] diagnosed the Claimant with depression, noted that the Claimant was unable to work, and that the disability was expected to last for a year or more.
- 5) In Exhibit D-6, [REDACTED] MA, diagnosed the Claimant with Major Depressive Disorder. Under the heading of "Daily Activities" in her Psychological Evaluation Report, Hornish noted, in pertinent part:

When asked to describe a typical day the individual responded, "Most days I'm just like a knot on a log." Upon further inquiry she said she tries to go to bed by midnight and rises by 7 a.m. ...She doesn't read as much as she used to because books won't hold her attention...She has to sit down frequently...She can't bowl much anymore. She has handled household finances more in the past but is able [*sic*] to do so.

Under the heading of "Diagnostic Rationale," [REDACTED] noted that the Claimant's diagnosis of Major Depressive Disorder is based on "...recurrent episodes of a predominantly depressed mood which has been chronic for more than two years." [REDACTED] also stated that the Claimant was observed to have, or reported to have:

...fatigue, anhedonia, feelings of worthlessness, insomnia, excessive and inappropriate guilt, and recurrent thoughts of death which interfere significantly with social functioning.

- 6) The Code of Federal Regulations, 20 CFR §404.1505 provides the following definition of disability:

The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

- 7) The Code of Federal Regulations, 20 CFR §404.1520, outlines a five-step process for evaluating disability:

(4) The five-step sequential evaluation process. The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (See paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (See paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (See paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (See paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and §404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and §404.1560(c).) (emphasis added)

- 8) The Code of Federal Regulations, 20 CFR §404, Subpart P, Appendix 1 (Listing of Impairments) describes the required level *severity* for step two of the five-step process for affective disorders as follows:

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

- a. Hyperactivity; or
- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractability; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace;
or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

- 9) The Code of Federal Regulations, 20 CFR §404.1509 explains the *duration* requirement of step two of the five-step process as:

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 the duration requirement.

VIII. CONCLUSIONS OF LAW:

- 1) The five-step process for evaluating disability from the Code of Federal Regulations, 20 CFR §404.1520, does not eliminate the Claimant at step one. Because she was not employed at the time of her evaluations, she could not be defined as 'not disabled' at this step.
- 2) The second step of the five-step process requires thresholds to be met in both severity and duration. The Claimant could not be defined as 'not disabled' at this step.
- 3) Documentation from the Claimant's Psychologist clearly showed that severity for Depressive syndrome was met, with anhedonia, sleep disturbance, decreased energy, feelings of guilt resulting in marked restriction or difficulties in social functioning and activities of daily living. The Claimant's Physician additionally noted duration of disability meeting the minimum requirement of twelve months. With duration and severity met, the Claimant is found disabled. The action of the Department to deny SSI-Related Medicaid is incorrect.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's decision that the Claimant does not meet the medical eligibility requirements to be defined as disabled and the action of the Department to deny SSI-Related Medicaid.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this ____ Day of August, 2009.

Todd Thornton
State Hearing Officer