



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General**

**Joe Manchin III  
Governor**

**Board of Review  
P.O. Box 1736  
Romney, WV 26757**

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

April 15, 2010

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

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 13, 2010. Your hearing request was based on the Department of Health and Human Resources' determination that you are not disabled to meet program requirements for 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. These regulations provide 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)]

The information which was submitted at your hearing revealed that you do not meet the criteria necessary to establish a disability for the SSI-Related Medicaid Program.

It is the decision of the State Hearing Officer to Uphold the action of the Department to terminate your SSI-Related Medicaid Program benefits..

Sincerely,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

cc: Erika Young, Chairman, Board of Review  
Ann Hubbard, ESS

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

-----,

**Claimant,**

**v.**

**Action Number: 10-BOR-880**

**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 April 15, 2010 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 April 13, 2010 on a timely appeal, filed February 24, 2010.

It should be noted here that the Claimant's benefits under the SSI-Related Medicaid program continue at the previous level of determination pending a decision from the State Hearing Officer.

This hearing was originally scheduled to convene on March 30, 2010 and was rescheduled due to a request from the Claimant.

**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's representative and mother  
Ann Hubbard, Economic Service Supervisor

Presiding at the Hearing was Eric L. Phillips, State Hearing Officer and a member of the Board of Review.

#### **IV. QUESTION 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 Hearing Summary
- D-2 Information submitted to the Medical Review Team (MRT) dated September 21, 2009
- D-3 Psychological report sent to Medical Review Team (MRT) dated October 14, 2009
- D-4 Medical reports sent to Medical Review Team (MRT) dated December 4, 2009
- D-5 Original medical approval dated February 25, 2009
- D-6 Medical Review Team decisions dated January 13, 2010 and January 21, 2010
- D-7 Notice of Termination dated January 27, 2010
- D-8 West Virginia Income Maintenance Manual Chapter 12.2

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

- 1) The Claimant is a 22 year-old male who was previously approved for the SSI-Related Medicaid program. The Claimant was previously diagnosed with "Asperger's syndrome with no social interactions" (Exhibit D-5) and represented by his mother ----- The Claimant's previous application for benefits and services under the SSI-Related Medicaid program were approved on February 25, 2009 and required a reevaluation of the Claimant in September 2009.
- 2) An application for reevaluation for SSI-Related Medicaid was processed and corresponding information was sent to the Medical Review Team, herein after MRT, on September 21, 2009 to determine if the Claimant was disabled under program guidelines (Exhibit D-2). A Social Summary Outline (Exhibit D-2) was completed with documented information and submitted to MRT on August 25, 2009. This document lists the Claimant's reasons for applying for the benefit as "40 percent hearing loss; asthma; sinusitis; lazy eye; joint issues; severely lacking in social skills". Additionally, the Social Summary Outline lists that the Claimant was employed in 2007 at a [REDACTED] store.
- 3) Upon receipt of the reevaluation, MRT requested a current report from the attending physician and a psychological report with a corresponding intelligence test. [REDACTED] M.D. completed a physician summary for the Claimant and documents in Exhibit D-2 the following:

Diagnosis-Pt says Asphergers [sic]

Prognosis-Unknown

Length of Time Incapacity/Disability is expected to last-not know if disabled

Employment Limitation-not known if unable

Additionally, the physician noted in the report that the Claimant was in need of a psychological evaluation.

- 4) A psychological examination of the Claimant was completed by [REDACTED] M.S. Psychologist on October 2, 2009. Exhibit D-3 was submitted to MRT on October 14, 2009 and documents in pertinent part:

The Asperger's Disorder diagnosis is based upon ----- impairment in the use of nonverbal behavior, such as eye gaze, facial expression, other gestures meant to impart social information. He also has failed to develop peer relationship appropriate to his age of 22 years. His behaviors tend to be stereotyped and somewhat odd. Additionally, he is very routine oriented and has difficulty if the routine is broken. He also goes through phases of interests, where he tends to collect and hoard objects or sources of information.

A Wechsler Abbreviated Scale of Intelligence (WASI) completed during the assessment yielded an IQ score of 126, which the psychologist notes is findings is "within the superior range of intelligence." This document also notes that the Claimant reported part-time employment at a [REDACTED] Store while attending high school.

- 5) On November 18, 2009, the Department received a request from MRT for a general physical to be completed for the Claimant. The attending physician chose not to complete a general physical and submitted the Claimant's current medical records. Exhibit D-4 was submitted to MRT on December 4, 2009.
- 6) In response to the information submitted to the MRT, an ES-RT 3 Disability/Incapacity Evaluation form was completed on December 7, 2009 (Exhibit D-6) which indicates that the MRT findings established that the Claimant was not physically disabled for the SSI-Related Medicaid Program. Section IV.B notes that the client does not have a medically determinable impairment or combination of impairments which significantly limits his ability to perform basic work activity; and Section IV E. of this documents states that the Claimant has "no covered disability conditions documented that would prevent work activities. The above does not qualify for MAO-D 1year."

On December 7, 2009, a DFA-RT-3M Disability/Incapacity Evaluation, which evaluates an individual's mental impairments, was competed in response to the Claimant's Psychological Report completed on October 2, 2009. Section IV. B notes that the client does not have a medically determinable impairment or combination of impairments which significantly limits his ability to perform basic work activity; Section IV. E states "deny CT [client] is dxed [diagnosed] Aspergers D/O [disorder]. He exhibits moderate functional limits which would not prevent work activity.

- 7) On January 27, 2010, the Department issued Exhibit D-7, Notice of Decision, to the Claimant. This document states in pertinent part:

Your application for medical has been denied effective 1-21-10.

Here is why:

Client is diagnosed aspergers; he exhibits moderate functional limits which would not prevent work activity.

- 8) -----, the Claimant's representative and mother testified that her son was diagnosed with Asperger's Disorder at an early age. She testified her son's condition creates difficulties in obtaining medical evaluations as he fears any surgical procedure will create an absence in school time as he is currently enrolled in [REDACTED] College. ----- acknowledged that it took some time to get a surgery completed on the Claimant's knee. ----- testified that her son relies on her to prompt and supervise his medications and other health related areas. ----- continued that her son follows schedules and patterns which allow him to "maintain".

----- stated that previous requirements for medical assistance required that her son apply for Social Security benefits. Upon completion of the application for Social Security benefits, it was suggested that the Claimant pursue assistance with the Division of Rehabilitation (DRS). ----- testified that her son attends [REDACTED] College through services provided by the DRS. She indicated that her son's participation in schooling has allowed him to progress socially and she has witnessed improvement in his interactions with others. ----- acknowledged that that her son was not disabled but "different" and testified that her son could obtain employment "handing out happy faces at [REDACTED]." ----- indicated that her son is in need of medical assistance while he is attending college until he is able to secure employment.

- 9) 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.

- 10) 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)

11) 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)

12) 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)

13) 20 CFR § 404.1521 Code of Federal Regulations:

- (a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities.
- (b) Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include--
  - (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
  - (2) Capacities for seeing, hearing, and speaking;
  - (3) Understanding, carrying out, and remembering simple instructions;
  - (4) Use of judgment;
  - (5) Responding appropriately to supervision, co-workers and usual work situations; and
  - (6) Dealing with changes in a routine work setting.

## **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 a statement of symptoms.
- 2) The Claimant attends and participates in secondary education but is currently not performing any substantial gainful activity (employment) and has not employed for a number of years. There is no question that the Claimant suffers from limited abilities from his diagnosis of Aspergers Disorder, however, the clinical evidence submitted to the MRT failed to demonstrate a severe impairment. More specifically, the Claimant's attending physician noted in submitted documentation that it was not know if the Claimant was disabled and failed to list any of the Claimant's employment limitations. Furthermore, the Claimant's representative testified that the Claimant did have the functional capacity to perform repetitive tasks in a basic work environment. While the Claimant presents a diagnosis of Aspergers Disorder, testimony and documentation exhibited a moderate functioning level which would not prevent work activity.
- 3) Based on the documentation provided, the Claimant does not meet the definition of disability as pursuant to SSI-Related Medicaid Requirements.

## **IX. DECISION:**

It is the decision of the State Hearing Officer to uphold the decision of the Department to terminate the Claimant's SSI-Related Medicaid assistance.

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

See Attachment

## **XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this \_\_\_\_ day of April 2010.**

---

**Eric L. Phillips**  
**State Hearing Officer**