



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 West Washington Street
Charleston, West Virginia 25313

Joe Manchin III
Governor

March 3, 2005

Dear Ms. _____;

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 7, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to close your Aged and Disabled Waiver Services Case.

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 and benefit levels for Aged and Disabled Waiver Services are determined based on current regulations. One of these regulations states:

"One of the reasons for the discontinuation of a client's Aged and Disabled Waiver Services is: No services have been provided for 100 days; for example, extended placement in long term care or rehabilitation facility." (WV Provider Manual Chapter 590.3 *DISCONTINUATION OF SERVICES*).

The information submitted at the hearing revealed: You have not received Aged and Disabled Waiver Services for 100 days.

It is the decision of the State Hearing Officer to UPHOLD the proposal of the Department, to discontinue Aged and Disabled Waiver Services Aged and Disabled Waiver Services for Ms. _____.

Sincerely,

Ray B. Woods, Jr., M.L.S.
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman - State Board of Review
Kay Ikerd, RN - B o S S
[REDACTED] Case Manager - C W VA S, Inc.
Leane Soard, Kanawha District DHHR Nursing Home Unit
_____, Daughter

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

NAME: _____

ADDRESS: _____

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 3, 2005 for Ms. _____.

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 scheduled for October 12, 2004, on a timely appeal filed August 5, 2004. The hearing was cancelled in error and was rescheduled for December 7, 2004.

It should be noted here that, Ms. _____' Home and Community Based Services, continues to remain open during the fair hearing process.

All persons giving testimony were placed under oath. A pre-hearing conference was not held between the parties.

II. PROGRAM PURPOSE

The program entitled Home and Community Based Services, is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Under Section 2176 of the Omnibus Budget Reconciliation Act of 1981, states were allowed to request waiver from the Health Care Financing Administration (HCFA) so that they could use Medicaid (Title XIX) funds for home and community based services. The program's target population is individuals who would otherwise be placed in an intermediate or skilled nursing facility (if not for the waiver services).

III. PARTICIPANTS

██████████ Claimant Representative/Case Manager - Central West Virginia Aging Services, Inc.

*Kay Ikerd, RN - Bureau of Senior Services (BoSS)

*Testimony obtained by Conference Call.

Presiding at the hearing was, Ray B. Woods, Jr., M.L.S., State Hearing Officer and, a Member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Should Ms. _____' Aged and Disabled Waiver Services Case be closed because, there have been no services provided in 100 days?

V. APPLICABLE POLICY

WV Provider Manual Chapters 503 *SERVICE OPTIONS AND LIMITATIONS* and; 590.3 *DISCONTINUATION OF SERVICES*

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

- D-1 WV Provider Manual Chapters 590.3 and 590.4
- D-2 Fax from CWVAS, Inc. dated 07/19/04 re: Closure
- D-3 Closure letter dated 07/23/04
- D-4 Scheduling Notice dated 10/12/04
- D-5 Scheduling Notice dated 08/19/04
- D-6 Request fro Hearing dated 08/05/04
- D-7 Memorandum dated 08/10/04 from BoSS to Ms. _____ re: Copy of Exhibits

VII. FINDINGS OF FACT

X This issue involves the proposed closure of Ms. _____' Home and Community Based Services Case. Ms. _____ is currently in a nursing facility. She has not received Home and Community Based Services in 100 days. According to Ms. _____ Ms. _____ requested the hearing because she hopes to return home.

X Ms. Kay Ikerd reviewed the specific policies for discontinuation of services.

X _____ Director Medicaid Program Operations sent a letter to Ms. _____ dated July 23, 2004. The letter stated in part, "The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued because no services have been provided for 100 days."

X Ms. _____ stated, "Although the case is still open, the Case Management Agency cannot bill for services while Ms. _____ is in the nursing facility."

X Ms. Casebolt requested a copy of this decision sent to Ms. _____' daughter, Ms. _____.

X A decision was rendered at the conclusion of the hearing

VIII. CONCLUSIONS OF LAW

X **WV Provider Manual Chapter 503 SERVICE OPTIONS AND LIMITATIONS:**

Medical Adult Day Care is an optional service. Case Management is also an optional service, as a client may choose Consumer-Directed Case Management instead. Homemaker is not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program. Homemaker services are limited to a maximum number of hours that are determined by the client's Level of Care (LOC). The notification of medical eligibility from the Quality Improvement Organization (QIO) will specify the maximum hours of service a client may receive. If it is believed that the client's LOC has changed, the Homemaker RN may request additional units of service by submitting a Prior Authorization Request for Additional Homemaker Hours.

X **WV Provider Manual Chapter 590.3 DISCONTINUATION OF SERVICES:**

The following are reasons for discontinuation of a client's ADW services. Please see Common Chapter 400, ¶480, and Appendix L following Common Chapter 700 for information about the fair hearing process.

REASON	EFFECTIVE DATE	PROCEDURE
Death	Date of Death.	CM notifies BoSS on monthly report, or immediately if Consumer-Directed CM. CM notifies county DHHR office.
Move Out of State	Date of Move.	CM notifies BoSS on monthly report, or immediately if Consumer-Directed CM. CM notifies county DHHR office.
Medically Ineligible	13 days after the date of the notification letter, if client does not request hearing.	QIO sends medical ineligibility notification letter to client.
Financially Ineligible	As determined by DHHR policy.	DHHR sends appropriate notification letter to client.
Client No Longer Desires Services	13 days after the date of the notification letter, if client does not request hearing	CM immediately notifies BoSS. Boss sends notification of discontinuation of services to client. BoSS ensures that CMA, HMA, and DHHR are notified as appropriate.
No Services Have Been Provided for 100 continuous days; for example, extended placement in long-term care or rehabilitation facility	13 days after the date of the notification letter, if client does not request hearing.	CMA or HMA immediately notifies BoSS when a client has not received services for 100 continuous days. Boss sends notification of discontinuation of services to client. BoSS ensures that CMA, HMA, and DHHR are notified as appropriate.
*Unsafe Physical	13 days after the date of	CMA or HMA notifies BoSS in writing the

Environment	the notification letter, if client does not request hearing.	reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation of services to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.
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** Client Non-Compliance with Program 13 days after the date of the notification letter, if client does not request hearing. CMA or HMA notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation of services to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.

***Deteriorating Condition and Potential for Injury 13 days after the date of notification letter, if client does not request hearing. CMA or HMA notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation of services to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.

*Unsafe Physical Environment: An unsafe physical environment is one in which the homemaker and/or other agency staff are threatened or abused and the staff's welfare is in jeopardy. This may include, but is not limited to, the following circumstances:

A. The client, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and threaten a homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including threatening animals.

B. The client, his informals, household members, or others display an abusive use of alcohol and/or drugs that results in the above.

C. In cases of danger to staff, services may be discontinued immediately.

** Client Non-Compliance with Program: The client is persistently non-compliant with the POC.

*** Deteriorating Condition and Potential for Injury: A provider is unable to meet the needs of a client whose deteriorating condition, without an informal support system in place, results in physical injury or the potential for injury. Provider may request that client choose another provider agency, if that agency is able to fulfill the needs of client. Provider may assist in making appropriate arrangements with the client for transfer to an institution or other appropriate care. All such arrangements must continue to assure that the client exercises his freedom of choice of qualified providers.

It must be noted that termination of the Medicaid benefit itself (e.g., the medical card) always requires a 13-day advance notice prior to the first of the month Medicaid stops. Coverage always ends the last day of a month. Examples: 1) Advance notice for termination is dated January 27, Medicaid would end February 28. 2) Advance notice is dated January 16, Medicaid ends January 31. This is true regardless of when ADW services end.

IX. DECISION

It is the decision of this State Hearing Officer to discontinue Aged and Disabled Waiver Services for Ms. _____. The WV Provider Manual Chapter 590.3 *DISCONTINUATION OF SERVICES* states in part, "No services have been provided for 100 days; for example, extended placement in long term care or rehabilitation facility."

Ms. _____ is not eligible for continued Aged and Disabled Waiver Services.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29