



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 22, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 8, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program because no services have been provided for 100 continuous days.

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 Aged/Disabled Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: One of the reasons for discontinuation of a client's ADW benefits is that no services have been provided for 100 continuous days, for example, extended placement in long-term care or rehabilitation facility. (Section 590.3 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that you were either in the hospital or a long term care facility from 10/05/04 until your son took you home on 01/18/05. No ADW services were provided for over 100 continuous days. .

It is the decision of the State Hearing Officer to uphold the proposal of the Department to terminate services under the ADW Program..

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Bogges, BoSS
[REDACTED] Raleigh County COA Inc.

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

_____,

Claimant,

v. **Action Number:** _____

**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 June 8, 2005 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 June 8, 2005 on a timely appeal, filed January 18, 2005. It should be noted that this hearing was originally scheduled for April 21, 2005. The case manager could not attend the hearing on this date and it was rescheduled to June 8, 2005.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

II. PROGRAM PURPOSE:

The Program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

_____, Claimant (By Telephone)
_____, Claimant's son and Representative (By Telephone)
[REDACTED] Case manager, Raleigh County COA Inc.
[REDACTED] RN, Pro Careers
Libby Boggess, RN. BoSS (By Telephone)

Presiding at the hearing was Margaret M. Mann, 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 claimant continues to meet the requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 503, 504 and 590.3 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Sections 503, 504 and 590.3 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 Case Chronology
- D-3 Letter dated 01/31/05 from Raleigh County Commission on Aging, Inc.
- D-4 Letter dated 12/30/04
- D-5 Letter dated 12/22/04
- D-6 PAS-2000 Eligibility Determination dated 12/08/03
- D-7 Letter dated 12/22/04
- D-8 Hearing Request dated 01/18/05
- D-9 Letter dated 01/31/05 from [REDACTED] Director, Medicaid Program Operations

VII. FINDINGS OF FACT:

- 1) The claimant is a recipient of ADW services. (D-6)

- 2) A letter dated 12/22/04 from [REDACTED] Raleigh County Commission on Aging, Inc., informed BoSS of the discontinuation of services for _____ as she had been in a nursing home since 10/08/04. She was hospitalized 10/05/04 and her PAS expired on 12/08/04. Ms. _____ was not expected to return home. (D-5)
- 3) A letter was sent to the claimant from [REDACTED] of BoSS notifying her of ADW case closure due to client request.(D-4)
- 4) A hearing request was received 01/18/05. (D-6)
- 5) [REDACTED] notified BoSS in a letter dated 01/31/05 that the claimant had been without service for 100 days on 01/13/05. (D-3)
- 6) The claimant was admitted to [REDACTED] Hospital on 10/05/04. She then went to [REDACTED] Nursing Home on 10/08/04 and was subsequently transferred to [REDACTED] on 10/19/04 where she received physical therapy to assist in the recovery from a stroke. The social worker from the facility informed the case manager that the claimant would never be able to return home. No review PAS was completed. On 01/05/05, the claimant was taken to [REDACTED] Hospital. The plan was for her to return to the nursing home. Ms. _____ had been without service for 100 days 01/13/05. Her son decided to take her home on 01/18/05. (D-3)
- 7) A letter was sent to the claimant from [REDACTED] BoSS dated 01/31/05 notifying her that services under the ADW Program are discontinued as no services have been provided for over 100 days. (D-9)
- 8) Section 503 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part that 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).
- 9) Section 504 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads that a client may desire additional services that are not within the scope of the ADW Program. If the family or other support systems are unable to provide these services, they may be purchased by the client and/or family from any source, including an ADW provider agency. This additional care is referred to as private pay.
- 10) Section 590.3 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part that the following are reasons for discontinuation of a client's ADW services:

No services have been provided for 100 continuous days, for example, extended placement in long-term care or rehabilitation facility.

Client no longer desires services.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that one of the reasons for discontinuation of a client's ADW services is: No services have been provided for 100 continuous days.
- 2) The claimant was either in the hospital or a long term care facility from 10/05/04 until her son decided to take her home on 01/18/05. During this period of time, there was a question if she would ever be able to return home.
- 3) No ADW services were provided to the claimant for over 100 continuous days.

IX. DECISION:

Based on evidence and testimony provided during the hearing, the State Hearing Officer has determined the Department followed appropriate policy and procedures in making the determination that the claimant no longer meets the criteria for the ADW Program as she did not receive services for 100 continuous days. Therefore, it is the State Hearing Officer's decision to uphold the Department's proposal to terminate the claimant's ADW case as described in the notification letter dated January 31, 2005. .

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of July, 2005.

**Margaret M. Mann
State Hearing Officer**