



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

February 28, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 2, 2004. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the Waiver Program as a means to remain in their home where services can be provided. A client in the ADW Program must receive homemaker services in order to retain eligibility. A discontinuation of services must occur when the client has not received services for 100 continuous days. [Aged/Disabled (HCB) Services Manual § 570- 570.1b, 503 and 590].

Information submitted at your hearing revealed that you did not receive homemaker services for a period that exceeded 100 continuous days (March 18, 2004 thru July 22, 2004).

Therefore, it is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

Pc: Chairman, Board of Review
BoSS

CWVAS

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
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 February 28, 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 December 2, 2004 on a timely appeal filed July 13, 2004.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending the results of this hearing.

All persons giving testimony were placed under oath.

II. PROGRAM PURPOSE:

The Program entitled **Medicaid Title XIX Waiver (HCB)** is set up cooperatively between the Federal and State governments 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 a 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). Services offered under the Waiver Program will include: (1) chore, (2) homemaker and (3) case management services. West Virginia has been offering the Waiver Services Program since July, 1982 to those financially eligible individuals who have been determined to need ICF level care but who have chosen the Waiver Program services as opposed to being institutionalized.

III. PARTICIPANTS:

_____, Claimant (appeared telephonically from his home)

_____, CM, CWVAS (appeared telephonically from the Claimant's home)

_____, RN, Care Inc. (appeared telephonically from the Claimant's home)

Libby Boggess, RN, BoSS (appeared telephonically from BoSS office in Charleston, WV)

Presiding at the hearing was Thomas E. Arnett, 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 continues to be eligible for services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Sections 503 and 590

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Aged/Disabled Home and Community Based Services Manual § 503 and 590.3.
- D-2 FAX from CWVAS to BoSS dated June 25, 2004, Over 100-days off of program.
- D-3 Notice of that Medicaid Aged and Disabled Waiver services will discontinue dated July 2, 2004.
- D-4 Correspondence from [REDACTED] MD, FACS, dated June 22, 2004.
- D-5 Correspondence from [REDACTED] dated June 25, 2004.

VII. FINDINGS OF FACT/CONCLUSIONS OF LAW:

1. On June 25, 2004, [REDACTED] Case Manager, Central West Virginia Aging Services (CWVAS) notified the Bureau of Senior Services (BoSS) that the Claimant had not utilized homemaker services for 100 continuous days (D-2).
2. In response to the notice from CWVAS, BoSS sent the Claimant a letter on July 2, 2004 (D-3) advising of the intent to discontinue eligibility for Aged/Disabled Waiver services based on policy located in Section 590.3 of the Aged/Disabled Waiver Home and Community Based Services Manual. This policy states that discontinuation of services is warranted when a client has not received homemaker services for 100 continuous days.
3. [REDACTED] testified that homemaker services provided through the Aged and Disabled Waiver Program are not an optional service and must be received as a condition of continued eligibility. She stated that correspondence was received from the Claimant's physician (D-4) and [REDACTED] (D-5) advocating for the Claimant to continue receiving benefits but policy fails to provide any stipulations under which eligibility can be continued when homemaker services are not received for a period of 100 continuous days.
4. [REDACTED] testified that the Claimant was admitted to [REDACTED] Hospital Center (UHC) on March 18, 2004 for reconstructive surgery of an open ulcer on his lower back. Dr. [REDACTED] and Dr. [REDACTED] met with the Claimant on June 14, 2005 and advised him that he would not be able to be discharged as he required wound care that would not be available in his home or a nursing home. Ms. [REDACTED] testified that the Claimant was discharged from UHC and returned to his home on July 22, 2004, but that he exceeded the 100 continuous days without services on June 26, 2004. Ms. [REDACTED] contends that the Claimant continues to require in-home services.
5. Aged/Disabled Home and Community Based Services Manual § 503 (D-1) states that Homemaker services are not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program.
6. Aged/Disabled Home and Community Based Services Manual § 590.3 (D-1) states that a discontinuation of services must occur when the client has not received services for 100 continuous days.

VIII. DECISION:

Policy provides that an individual must receive homemaker services to remain eligible for the Aged and Disabled Waiver Program and that a discontinuation of services must occur when they have not received services for 100 continuous days.

Evidence received at the hearing confirms that the Claimant did not receive homemaker services for 100 continuous days while receiving medical treatment at [REDACTED] Hospital Center. While the Claimant's situation is unfortunate, there are no circumstances that would allow for an exception to this policy.

After reviewing information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **uphold** the Agency's proposal to terminate benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

IX. RIGHT OF APPEAL

See Attachment.

X. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.