



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

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 13, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 19, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your Aged and Disabled Waiver Services case for lack of services in over 100 days.

In arriving at a decision, the State Hearings 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 and Disabled Waiver Services Program is based on current policy and regulations. Some of these regulations state as follows: The Case Management Agency (CMA) or Home Maker Agency (HMA) immediately notifies BoSS (Bureau of Senior Services) 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. (Aged/Disabled Home and Community Based Services Manual §590.3 *DISCONTINUATION OF SERVICES*).

The information submitted at your hearing revealed: Services under the Aged/Disabled Waiver program will be discontinued due to an Unsafe Physical Environment, Deteriorating Condition, and your Potential for Injury.

It is the decision of the State Hearings Officer to UPHOLD the PROPOSAL of the Department to discontinue your case.

Sincerely,

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

cc: State Board of Review
Linda Wright, RN – BoSS
[REDACTED] CM – CWVAS, Inc.
[REDACTED] SW – Sunbridge
[REDACTED], RN - WVMI

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

_____,

Claimant,

v.

Action Number: 06-BOR-1293

**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 July 13, 2006 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 19, 2006 on a timely appeal filed February 24, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision. A pre-hearing conference was not held between the parties and, Ms. _____ did not have legal representation.

II. PROGRAM PURPOSE:

The Program entitled Aged and Disabled Waiver Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & 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*
_____, Social Worker*
_____, Case Manager – Central West Virginia Aging Services, Inc
_____, YWCA Program Director – Shanklin Center
_____, YWCA Case Manager – Shanklin Center
Linda Wright, RN – Bureau of Senior Services
*Participated by telephone conference

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. QUESTIONS TO BE DECIDED:

The question(s) to be decided is: Should Aged and Disabled Waiver Services for Ms. _____ be discontinued due to an Unsafe Physical Environment, Deteriorating Condition and Potential for Injury?

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual §590.3 *DISCONTINUATION OF SERVICES*.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community Based Services Manual § 590.3 *DISCONTINUATION OF SERVICES* Policy.
- D-2 Letter from Ms. _____ to Ms. _____ R. N., dated 01/27/06
- D-3 Memorandum from _____, R. N., L.S.W dated 01/26/06
- D-4 Discontinuation of Services Letter dated 02/01/06
- D-5 Request for Hearing
- D-6 Miscellaneous Hearing Documents

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

1) _____ The Bureau of Senior Services received letters from Ms. _____ and Ms. _____ dated January 27, 2006 and January 26, 2006 respectively (Exhibits D- 2 & 3). The letters expressed a need to discontinue services because of an "Unsafe Physical Environment, Deteriorating Condition and Potential for Injury." Ms. _____ has overmedicated on several

occasions and has had numerous psychiatric admissions. Ms. _____ is currently residing in a nursing facility due to her present physical condition

2) On February 1, 2006, the Bureau of Senior Services issued a letter to Ms. _____ stating in part, “The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to **unsafe physical environment, deteriorating condition and potential for injury.**

3) The Bureau for Medical Services received a Request for Hearing of February 24, 2006.

4) At the hearing, Ms. Linda Wright, RN reviewed the policy. There were no questions from the participants.

5) Testimony from the Case Management Professionals supported the proposal to discontinue services.

6) Aged/Disabled Home and Community Based Services Manual §590.3
*DISCONTINUATION OF SERVICES – UNSAFE PHYSICAL ENVIRONMENT;
DETERIORATING CONDITION; AND UNSAFE PHYSICAL ENVIRONMENT:*

Unsafe Physical Environment – The effective date is 13 days after the date of the notification letter, if client does not request hearing. The Procedure: Case management Agency (CMA) or Home Maker Agency (HMA) notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.

Deteriorating Condition and Potential for Injury – The effective date is 13 days after the date of the notification letter, if client does not request hearing. The Procedure: Case management Agency (CMA) or Home Maker Agency (HMA) notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation 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 member, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals.

B. The member, his informals, household members, or others display an abusive use of alcohol and/or drugs.

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

VIII. CONCLUSIONS OF LAW:

1) The Aged/Disabled Home and Community Based Services Manual §590.3 *DISCONTINUATION OF SERVICES FOR UNSAFE PHYSICAL ENVIRONMENT; DETERIORATING CONDITION; AND UNSAFE PHYSICAL ENVIRONMENT* are established as follows:

Unsafe Physical Environment – The effective date is 13 days after the date of the notification letter, if client does not request hearing. The Procedure: Case management Agency (CMA) or Home Maker Agency (HMA) notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.

Deteriorating Condition and Potential for Injury – The effective date is 13 days after the date of the notification letter, if client does not request hearing. The Procedure: Case management Agency (CMA) or Home Maker Agency (HMA) notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation to client. BoSS ensures that CMA, HMA and DHHR are notified as appropriate.

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- A. The member, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals.
- B. The member, his informals, household members, or others display an abusive use of alcohol and/or drugs.
- C. In cases of danger to staff, services may be discontinued immediately.

2) The testimony from the Case Management Professionals supports the discontinuation of services for Ms. _____.

IX. DECISION:

It is the decision of this State Hearing Officer to UPHOLD the Department's PROPOSAL to discontinue services under the Aged and Disabled Waiver Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 13th Day of July, 2006.

**Ray B. Woods, Jr., M.L.S.
State Hearing Officer**