



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

November 9, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 2006. Your hearing request was based on the Department of Health and Human Resources' action to terminate your father's benefits and services under the Aged/Disabled (HCB) Title XIX Waiver Services 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 Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state as follows: A client must receive advance notice in all situations involving adverse actions except those described in Section 6.3, C, 2. The case management agency is notified when an HCB waiver client becomes ineligible for any reason. (West Virginia Income Maintenance Manual Sections 6.3 D and 17.21)

Information submitted at your hearing revealed that neither your father nor his case management agency received timely notification that his Aged/Disabled Waiver Program benefits had been terminated due to excessive assets.

It is the decision of the State Hearing Officer to **reverse** the action of the Department to terminate your father's benefits under the Aged/Disabled Waiver Program.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Lillian Brown, ESS, DHHR
[REDACTED] CWVAS

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

_____,

Claimant,

v.

Action Number: 06-BOR-2684

**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 November 9, 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 October 30, 2006 on a timely appeal filed July 31, 2006.

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Waiver 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:

_____, son of Claimant
_____, caretaker of Claimant
_____, Case Manager, Central WV Aging Services
_____, Homemaker RN, _____ Senior Center
Lillian Brown, Economic Services Supervisor, DHHR

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether the Agency was correct in its action to terminate services under the Aged/Disabled Waiver (HCB) Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Sections 1.2, 6.3 and 17.21
WVDHHR Common Chapters Manual Sections 750 and 780

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Food Stamp 24-Month Review form
- D-2 Food Stamp/HCB Waiver termination letter dated March 17, 2006
- D-3 Review appointment letter
- D-4 Letter concerning Food Stamp EBT account
- D-5 Aged/Disabled Waiver redetermination form with Rights and Responsibilities
- D-6 Asset verification
- D-7 Case comments
- D-8 Food Stamp/Aged Disabled Waiver termination letter dated June 15, 2006
- D-9 SLIMB denial letter dated June 15, 2006
- D-10 Medicaid history
- D-11 West Virginia Income Maintenance Manual Section 17.21

Claimant's Exhibits:

- C-1 Bank statement
- C-2 CWVAS case notes
- C-3 Letter to _____ from _____
- C-4 Letter to _____ from _____
- C-5 DHS-1 correspondence
- C-6 Billing information for _____ Senior Center

VII. FINDINGS OF FACT:

- 1) On or about March 7, 2006, the Claimant was notified (D-3) that a redetermination appointment had been scheduled for him on March 14, 2006. The letter does not specify the program for which eligibility would be reviewed.
- 2) The Claimant failed to complete the review and the Department sent a Notice of Decision (D-2) to him on March 17, 2006 which states, in part:

Action: Your Home and Community Based Waiver Medicaid is/are being closed. You will receive your last benefit in March 2006.

Reason: _____ did not complete an Eligibility Review on the date scheduled.

- 3) The Claimant's caretaker completed the Aged/Disabled Waiver redetermination (D-5) on March 20, 2006 and the case was pended for 30 days so that the Claimant's asset information could be verified.
- 4) The Department received a facsimile transmittal (D-6) from the Claimant's daughter, [REDACTED], on April 24, 2006 which included power of attorney information and a bank statement. The Economic Services Supervisor testified that the Department determined the Claimant's assets were excessive for the Aged/Disabled Waiver Program. The Claimant passed away on June 6, 2006.
- 5) The Department sent notification to the Claimant on June 15, 2006 (D-8) which states:

Action: Your 3/20/06 application for Home and Community Based Waiver Medicaid has been denied.

Reason: The amount of assets is more than is allowed for this benefit.

The Economic Services Supervisor testified that the case worker had erred in allowing the verification deadline to extend past 30 days and in failing to send notification of action taken on the case immediately following the review. She testified that she could not change the Department's decision because the Claimant's assets were excessive and she pointed out the Claimant received a termination letter on March 17, 2006 indicating that his case would close because he had not completed a redetermination.

- 6) Both the Claimant's son and his caretaker testified that a bank statement had been provided to the Department by them four days prior to the Department's receipt of the facsimile transmission from [REDACTED]. However, the statement could not be located in the case

record. The Case Manager testified that the Department failed to notify her agency of the Claimant's ineligibility for Aged/Disabled Waiver services and that the Claimant had continued to receive a monthly medical card for another type of Medicaid. She stated that both the Claimant's family and the Case Management Agency believed that the Claimant was still eligible for Aged/Disabled Waiver services and were not notified of the benefit termination until after the Claimant's death (as noted in Exhibits C-5 and D-8). Because the Case Management Agency had not been notified of the termination, the Claimant continued to receive Waiver services through Central West Virginia Aging Services and the [REDACTED] Senior Center. These services remain unpaid.

- 7) West Virginia Income Maintenance Manual Section 17.21 (D-11) states:

At application the Worker returns the completed DHS-2 and copies of pages 1, 2 and 3 of the ES-2 to the case management agency within 30 days of completion of the ES-2. This notifies the case management agency of the financial eligibility decision and provides them with the case number. The Worker retains a copy of the completed DHS-2 for the case record.

The case management agency is also notified when an HCB waiver client becomes ineligible for any reason. The Worker uses form DHS-2.

- 8) West Virginia Income Maintenance Manual Section 6.1 states:

The applicant must be notified in writing of the action taken on his application, and the recipient must be notified in writing, and usually in advance, of any action resulting in a change in benefits. Adverse actions, other than those specified in Section 6.3, C, 2, require an advance notice period before any action is effective.

In addition to the client notification letter, the Worker must provide the client with calculations showing how eligibility and/or the amount of the benefit were determined. The Worker must also provide the client the opportunity to request a Pre-Hearing Conference and/or a Fair Hearing.

- 9) West Virginia Income Maintenance Manual Sections 6.3A, 3 and B state:

If the client fails, without good cause, to provide the information by the established date, an ES-NL-C must be sent to notify the client of the failure and the resulting case action.

Assistance Group closure constitutes an adverse action for Medicaid programs.

10) West Virginia Income Maintenance Manual Section 6.3 D states:

The ES-NL-C must always be used with the Pre-Hearing Conference and or Fair Hearing request form, DFA-FH-1 and the appropriate computation forms.

A client must receive advance notice in all situations involving adverse actions except those described in Section 6.3, C, 2. The advance notice requirement is that notification be mailed to the client at least 13 days prior to the first day of the month in which the benefits are affected.

The 13-day advance notice period begins with the date shown on the notification letter.

11) WVDHHR Common Chapters Manual Section 750 states, in part:

Adequate notice of a Department decision regarding an Assistance Payment, General Assistance, Food Stamps, TRIP, Social Services, Medical Assistance or Handicapped Children's Services, or Child Advocate Office Services shall be sent to the client or recipient of services (or given in writing in face-to-face contact) and must include the following information.

1. The action or proposed action to be taken, i.e., denial, reduction or closure.
2. The reason(s) for the action given in terms the client or recipient of services can readily understand specifying all applicable policy manual sections.
3. The right to a hearing and the time period for requesting a hearing as well as the circumstances under which assistance may be continued pending a hearing decision.

12) WVDHHR Common Chapters Manual Section 780 states, in part:

If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse. He/she will order retroactive payments, if indicated, back to the date of incorrect action in the amount the Claimant would have received, minus whatever amount of emergency assistance he/she may have received.

VIII. CONCLUSIONS OF LAW:

- 1) Policy clearly specifies that a client must receive advance notification of situations involving adverse actions and that this notification must be mailed to the client at least 13 days prior to the first day of the month in which benefits are affected. The Claimant was notified that his benefits would be terminated effective April 2006 because he failed to complete a redetermination on March 14, 2006, however, that issue was rectified when the Claimant's caretaker completed the review on March 20, 2006.
- 2) While it was determined that the Claimant's assets were excessive for the Aged/Disabled Waiver Program, the Department admittedly failed to notify the Claimant that his case would close for this reason. The Claimant was not sent notification of the benefit termination until June 15, 2006. Therefore, case closure should not have been effective until July 2006.
- 3) In addition, the Department failed to notify the case management agency – as required by policy- that the Claimant had become ineligible for Aged/Disabled Waiver benefits, causing the homemaker agency to continue services until the Claimant's death in June 2006.
- 4) The Department failed to observe adverse action notification requirements and acted incorrectly in terminating the Claimant's Aged/Disabled Waiver benefits effective April 2006.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's action to terminate the Claimant's benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program. The Claimant is entitled to receive retroactive benefits for the period of April 2006 until the date of his death in June 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 9th day of November, 2006.

**Pamela L. Hinzman
State Hearing Officer**