



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

July 10, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 26, 2007. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits 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 that when a member no longer desires services, the Case Management Agency notifies the Bureau of Senior Services (BoSS). BoSS sends notification of discontinuation of services to the member and assures that other appropriate parties are notified. [Aged/Disabled (HCB) Services Manual Section 504.4]

Information submitted at your hearing reveals that you requested Aged/Disabled Waiver Program services be discontinued and the Department appropriately proposed termination of benefits based on that request.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to terminate your benefits and services 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  
BoSS  
Potomac Highlands Support Services

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

\_\_\_\_\_,

**Claimant,**

v.

**Action Number: 07-BOR-1454**

**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 10, 2007 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 26, 2007 on a timely appeal filed May 14, 2007. All parties participated in the hearing telephonically.

It should be noted that the Claimant is receiving continued benefits pending a hearing decision.

**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:**

[REDACTED], Claimant  
[REDACTED] Case Manager, Potomac Highlands Support Services  
[REDACTED] Homemaker Nurse, Pendleton Senior and Family Services  
[REDACTED] Licensed Social Worker, Bureau of Senior Services

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 proposal to terminate benefits under the Aged/Disabled Home and Community-Based Waiver Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community-Based Services Manual Sections 504.4

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 504.4
- D-2 Notice of discontinuation of services

**Claimant's Exhibits:**

- C-1 Homemaker records from Pendleton Senior and Family Services

**VII. FINDINGS OF FACT:**

- 1) Potomac Highlands Support Services submitted a case termination request to the Bureau of Senior Services (BoSS) on behalf of the Claimant indicating that the Claimant no longer desires Aged/Disabled Waiver Program services. In response, the Department sent the Claimant a notice of discontinuation (D-2) which states, in part:

The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to member request. This decision is based on policy in the Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 504.4. If you have not requested a hearing within thirteen

(13) days from the date of this notice, services will be discontinued.

- 2) The Claimant testified that she does not wish to discontinue her benefits, but was advised that she needed to make a choice between receiving Aged/Disabled Waiver services and working in her home as a babysitter for a non-relative, three-year-old child. As a result, she chose to continue providing child care services. The Claimant, who has a primary diagnosis of cerebral palsy and ambulates with a walker, believes that she still needs Aged/Disabled Waiver benefits and alleged that other individuals are permitted to work while receiving these services. She added that Child Protective Services had visited her home regarding the situation and did not find the child to be at risk. The Claimant testified that she does not bathe the child, only cooks the child microwave meals, and does not ask anyone to help her care for the child. She stated that she feels better when she has something to occupy her time.

The Claimant's case manager testified that she had discussed the babysitting issue with the Bureau of Senior Services and was informed that most individuals who require a nursing home level of care could not provide adequate care for a three-year-old child. The case manager, who has observed the child in the Claimant's home, testified that food and beverages are placed in the refrigerator at the child's reach and that the child is capable of her own toileting. The case manager testified that the Claimant's homemaker assists the Claimant with hair care, bath and meal preparation, housework and medication reminders.

The homemaker nurse testified she is concerned that caring for a child in the home would interfere with the Claimant's level of need under the Aged/Disabled Waiver Program. She also testified that problems have arisen as the Claimant has refused assistance from several homemakers due to the Child Protective Services referral.

The BoSS social worker testified that she is aware of no instances in which an Aged/Disabled Waiver Program recipient has worked while receiving services, and that individuals requiring a nursing facility level of care are normally incapable of working.

- 3) Aged/Disabled Waiver Policy Manual Section 504.4 (D-1) lists "member no longer desires services" as a reason for discontinuation of Aged/Disabled Waiver benefits. This policy states that discontinuation is effective 13 days after the date of the notification letter if the member does not request a hearing. It indicates that the case management agency notifies BoSS of the member's request and stipulates additional notification procedures.

**VIII. CONCLUSIONS OF LAW:**

- 1) Policy dictates that the Department takes action to discontinue services when an Aged/Disabled Waiver Program recipient requests that his/her case be closed.
- 2) The Claimant was receiving Aged/Disabled Waiver benefits while providing babysitting services for a three-year-old child in her home. Testimony reveals that concerns were voiced about the situation and the Claimant was advised to choose between receiving continued Aged/Disabled Waiver benefits or providing babysitting services for the child. She chose to continue babysitting and benefits were terminated due to member request.
- 3) The Department correctly followed policy in proposing termination of the Claimant's benefits due to member request.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate the Claimant's benefits and services under the Aged/Disabled, Title XIX (HCB) Waiver Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 10th Day of July, 2007.**

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**Pamela L. Hinzman  
State Hearing Officer**