



**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**

November 1, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 30, 2007. Your hearing request was based on the Department of Health and Human Resources' action to deny your request under the provision of dual services from both the Personal Care and Aged/Disabled Home and Community Based Services Waiver (ADW) Programs.

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: Approval of the provision of both ADW and PC services to the same person will be considered if certain criteria is met. (Sections 507.15 & 507.15.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 updated eff. 08/01/2006)

The information which was submitted at your hearing revealed that a request was made for dual services. However, the requesting PC RN did not follow up with information requested by BoSS.

It is the decision of the State Hearing Officer to uphold the action of the Department to deny your request under the provision of dual services from both the Personal Care and Aged/Disabled Home and Community Based Services Waiver (ADW) Programs.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, BoSS

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

█
Claimant,

v.

Action Number: 07-BOR-1959

**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 October 30, 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 October 30, 2007 on a timely appeal, filed August 21, 2007.

It should be noted here that the Claimant's is a recipient of ADW services.

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:

It should be noted that everyone participated telephonically.

██████████ Claimant
██████████ Claimant's Spouse
██████████, Case Manager, ██████████
Kay Ikerd, RN, Bureau of Senior Services
Cathie Zuspan, RN, Bureau of Senior Services

Observing:

██████████, Case Manager, ██████████

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 meets the requirements needed to receive dual services.

V. APPLICABLE POLICY:

Sections 507.15 & 507.15.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 updated 08/01/2006

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Sections 507.15 & 507.15.1 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 Updated 08/01/2006
- D-2 Dual Service Provision Request dated 06/15/2007 with medical information attached
- D-3 Pre-Admission Screening for Aged/Disabled Waiver Services dated 11/28/2006
- D-4 Requests from BoSS for additional information dated 06/22/2007 and 07/02/2007
- D-5 Denial Notice dated 08/09/2007

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of ADW services.
- 2) An Aged & Disabled Waiver & Personal Care Dual Service Provision Request was submitted to BoSS on 06/15/2007 on behalf of the Claimant by SW of ██████████. (Exhibit D-2)

- 3) On 06/22/2007 a request for additional information was made by BoSS. The following information was needed. 1) A completed copy of this cover sheet with the original signature. Copy was not complete. Dates for period of request must be in complete months not in partial months. 2) Documentation of caregivers for both programs and their relationship to member. 3) Current ADW PAS 2005, or PAS 2000 if prior 11/2005. ADW PAS not received. 4) Current PC Medical Eligibility Assessment, or PAS 2000 if prior 11/2005. 5) Current ADW and PC RN Assessment. Nurse signed and dated PCMEA before completion by MD. Please resubmit. 6) Current ADW RN POC. Services duplicated on ADW and PC LOC. Additional time under toileting allotted for assistance on and off the bedpan, diapering, etc. Please refer to Personal Care Standards of current Personal Care Services Manual. 7) Proposed PC POC. Services duplicated on the ADW and PC POC. Please resubmit. (Exhibit D-4)
- 4) A second request for information was requested 07/02/2007. The following information was requested. 1) A completed copy of this cover sheet with the original signature. Copy was not complete. Dates for period of request must be in complete months not in partial months. 2) Documentation of caregivers for both programs and their relationship to member. 3) Current ADW PAS 2005, or PAS 2000 if prior 11/2005. ADW PAS not received. 4) Current PC Medical Eligibility Assessment, or PAS 2000 if prior 11/2005. RN signed and dated PCMEA before physician completed PCMEA. 5) Current ADW RN POC. Services are duplicated on the ADW and PC LOC. Additional time allotted for assistance on and off the bedpan, diapering etc. Please refer to Personal Care Standards of the Current Personal Care Services Manual. 6) Proposed PC POC. Services are duplicated on the ADW POC and the PC POC. Please resubmit. 7) Any additional documentation that substantiates the request. (Exhibit D-4)
- 5) Un-refuted testimony from KZ, RN, BoSS, revealed that the requested information was not received.
- 6) A notice was sent to the Claimant dated 08/09/2007. It reads in part “The provision of dual services you have requested from both the Medicaid Aged and Disabled Waiver and Personal Care programs has been **denied. Additional documentation was requested from the Personal Care Agency and was not submitted. Upon receipt of the additional documentation requested further consideration will be given to this matter.**” (Exhibit D-5)
- 7) ADW Manual, Section 507.15, entitled Dual Provision of ADW and Personal Care (PC) Services, reads in part: Approval of the provision of both ADW and PC services to the same person will be considered if the following criteria are met:
 - A. Any PC services provided to an active ADW member must be approved by the reviewing agencies (see #H below), including the initial 60 hours. “Dual Service Provision Request” (Attachment 19) must be completed.
 - B. An ADW member must be receiving services at Level of Care D.
 - C. All policy set forth in Chapter 500 of the PC Manual must be followed. PC policy supercedes ADW policy for this request.
 - D. There must be a PC RN Plan of Care and a HM RN Plan of Care. Both plans must be coordinated between two agencies providing hands-on direct services to ensure that services are not duplicated. PC and HM services cannot be provided during the

same hours on the same day. A service planning meeting between the Case Manager (ADW agency or self-directed), HM RN, and PC RN must be held with the member in the member's residence and documented on the "Request for Dual Service Provision."

- E. There must be a valid ADW PAS and a valid PC Medical Eligibility Assessment that documents the need for both services.
 - F. The ADW CM or self-directed CM will be responsible for the coordination of the two services. If there is no CMA (member is self-directed), the ADW RN and the PC RN will provide oversight to assure compliance.
 - G. Permission to provide PC and ADW services to a member must be requested by the PC RN and signed by the PC RN, CM, (or responsible party if self-directed), HM RN, and the member or member's representative. Original signatures are required; i.e., "signature of member on file" is not acceptable.
 - I. Documentation submitted must include approved current medical eligibility of both ADW and PC services, ADW and PC RN Plans of Care, RN assessments, and any documentation that substantiates the request. Additionally, a narrative describing how services will be utilized and verification that ADW and PC services will not be duplicated must be submitted, as well as documentation of caregivers for both programs and their relationship to the member. Requests will be reviewed by BoSS or BMS RNs. Approvals/denials will be based on the documentation submitted, appropriate program policy manuals, PC standards, and professional judgments. The member or member's representative, PC RN, HM RN, and CM will receive notification of denial or approval from the reviewing agency. If the request is denied or the hours approved are less than requested, the notification will include fair hearing information.
- 8) ADW Manual, Section 507.15.1, entitled Personal Options Dual Provision of ADW and Personal Care (PC) Services, reads in part: Approval of the provision of both ADW and PC services to the same person will be considered if the following criteria are met:
- A. Any PC services provided to an active ADW member must be approved by the reviewing agencies (see #H below), including the initial 60 hours. "Dual Service Provision Request" (Attachment 19) must be completed.
 - B. An ADW member must be receiving services at Level of Care D.
 - C. All policy set forth in Chapter 500 of the PC Manual must be followed. PC policy supercedes ADW policy for this request.
 - D. There must be a PC RN Plan of Care and Resource Management Plan. Both plans must be coordinated, providing hands-on direct services to ensure that services are not duplicated. PC and HM services cannot be provided during the same hours on the same day. A planning meeting must be held with the member and documented on the "Request for Dual Service Provision."
 - E. There must be a valid ADW PAS and a valid PC Medical Eligibility Assessment that documents the need for both services.
 - F. The member or their representative will be responsible for the coordination of the two services. If there is no case manager, the PC RN will provide oversight to assure compliance.
 - G. Permission to provide PC and ADW services to a member must be requested by the PC RN and signed by the PC RN and the member or their representative.

Original signatures are required; i.e., "signature of member on file" is not acceptable.

- I. Documentation submitted must include approved current medical eligibility of both ADW and PC services, RMP and PC RN Plans of Care, and any documentation that substantiates the request. Additionally, a narrative describing how services will be utilized and verification that ADW and PC services will not be duplicated must be submitted, as well as documentation of caregivers for both programs and their relationship to the member. Requests will be reviewed by BoSS or BMS RNs. Approvals/denials will be based on the documentation submitted, appropriate program policy manuals, PC standards, and professional judgments. The member or member's representative, PC RN, HM RN (if applicable), and CM (if applicable) will receive notification of denial or approval from the reviewing agency. If the request is denied or the hours approved are less than requested, the notification will included fair hearing information.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that certain criteria must be met before a request under the provision of dual services from both the Personal Care and Aged/Disabled Home and Community Based Services (ADW) Waiver Programs can be approved.
- 2) A dual service provision request was made on behalf of the Claimant 06/15/2007. In order to determine eligibility, BoSS requested additional information twice from the requesting PC RN.
- 3) Un-refuted testimony at the hearing revealed that this information was not provided.
- 4) The denial of dual services is valid.

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 does not meet the criteria for dual services. Therefore, it is the State Hearing Officer's decision to uphold the Department's denial of the Claimant's request under the provision of dual services from both the Personal Care and Aged/Disabled Home and Community Based Services Waiver (ADW) Programs as described in the notification letter dated August 9, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 1st Day of November, 2007.

**Margaret M. Mann
State Hearing Officer**