



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

March 22, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 9, 2007. Your hearing request was based on the Department of Health and Human Resources' action to terminate services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program due to an unsafe physical environment.

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: One of the reasons for discontinuation of a client's ADW benefits is because of an 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: B. The member, his informals, household members, or others display an abusive use of alcohol or drugs. C. In cases of danger to staff, services may be discontinued immediately. (Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003)

The information which was submitted at your hearing revealed that there was an allegation of a drug transaction witnessed by a homemaker. The State Police advised the agency to discontinue services for protection of staff.

It is the decision of the State Hearing Officer to uphold the action of the Department to terminate your services under the ADW Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED], CWVAS

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

_____,

Claimant,

v. **Action Number: 07-BOR-568**

**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 March 9, 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 March 9, 2007 on a timely appeal, filed December 28, 2006.

It should be noted here that the Claimant's benefits have been terminated.

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:

_____, Claimant
_____, Homemaker RN, Central WV Aging Services, Inc.
_____, RN. Bureau of Senior Services

It should be noted that everyone participated in the hearing telephonically.

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 continues to meet the requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003
- D-2 Letter dated December 12, 2006 from Central WV Aging Services, Inc.
- D-3 Termination Notice dated December 21, 2006

VII. FINDINGS OF FACT:

- 1) The Claimant was a recipient of ADW services.
- 2) On December 15, 2006 the Bureau of Senior Services (BoSS) received a letter from the RN HMA and Case Manager of Central West Virginia Aging Services, Inc. It reads in part: "This agency is closing services provided by Central WV Aging Services, Inc. Case Management and Homemaker divisions as allowed by State Policy & Procedure Manual Chapter 504.4, Page 20, Unsafe Physical Environment. An alleged drug transaction was witnessed by a Homemaker. The State Police have been notified. This agency has been advised by the State Police to discontinue services for protection of Homemakers and Staff. The last date of service was 12-07-06." (Exhibit D-2)
- 3) Testimony from the Homemaker RN from Central WV Aging Services, Inc. revealed that on November 27, 2006 it had been reported to them that there had been a witness to an illegal drug transaction. The witness reported pills and money allegedly being

exchanged between the Claimant and another person. At that time, this information was faxed to their central office. They notified the State Police on November 27, 2006 also. At that time, the State Police encouraged for the safety of everyone involved to terminate services. On November 30, 2006, they sent a homemaker back in the home under the direction of their director until an investigation could be completed. On December 1, 2006 due to the circumstances reported they pulled the homemaker again and talked to an individual from BoSS. With no new direction from the police, their attorney advised they needed to try to close the case because they felt the environment was unsafe. A letter was sent to BoSS (Exhibit D-2) and then a notice was sent to the Claimant from BoSS. (Exhibit D-3)

- 4) A letter was sent to the Claimant dated 12/21/2006 from BoSS informing her that: “The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to **unsafe physical environment**.” (Exhibit D-3)
- 5) The Claimant denied having illegal drugs in her home. She does have two house dogs and one bit a “state” worker who was in her home. The only thing that maybe the homemaker seen was her friend down the road who has had a stroke asked for some pills you can buy over the counter for leg cramps. The Claimant asked the homemaker to take her to the friend’s home to give her the pills. The Claimant discussed her displeasure with the services the various homemakers provided. She feels the contract has been broke as she has not received any services since December 7, 2006. She has not talked to the State Police in regard to the allegation of a drug transaction.
- 6) Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective November 1, 2003 reads in part that notice for discontinuation of a member’s services must be sent to BoSS. Notice must contain the following information: date, agency name and address, name and title of person sending notice, name and address of member and/or Power of Attorney, reason for closure, and last date of service. The following are reasons for discontinuation of a member’s ADW services. Reason: *Unsafe Physical Environment. The action is taken 13 days after the date of the notification letter, if member does not request hearing.

*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) Policy specifies that one of the reasons for discontinuation of a client's ADW services is: Unsafe Physical Environment. An unsafe physical environment is defined as 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: 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) In this case there was an allegation of a homemaker witnessing drugs being exchanged between the Claimant and another person. The Claimant denies the allegation and an investigation has not been completed. However, the State Police advised the agency to discontinue services for the protection of staff.
- 3) The termination of the case 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 no longer meets the criteria for the ADW Program due to an unsafe physical environment. Therefore, it is the State Hearing Officer's decision to uphold the Department's action to terminate the claimant's ADW case as described in the notification letter dated December 21, 2006.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 22nd Day of March, 2007.

**Margaret M. Mann
State Hearing Officer**