



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
2699 Park Avenue, Suite 100
Huntington, WV 25704

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 8, 2008

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held June 19, 2008. Your hearing request was based on the Department of Health and Human Resources' termination of benefits under the Medicaid Aged/Disabled Waiver (ADW) 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 ADW program is based on current policy and regulations. Some of these regulations provide for closure of ADW services in situations that define a member's household as an unsafe physical environment.

The information that was submitted at your hearing revealed that your household met the definition of an unsafe physical environment.

It is the decision of the State Hearing Officer to **uphold** the action of the Department to terminate benefits under the Aged/Disabled Waiver Program.

Sincerely,

Todd Thornton
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: 08-BOR-1261

**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 8, 2008 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 19, 2008 on a timely appeal, filed April 17, 2008.

All persons offering testimony were placed under oath.

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:

_____, Claimant
_____, Claimant's Sister
_____, Case Manager, Catholic Community Services
_____, RN, Catholic Community Homemaker Services
Kay Ikerd, RN, Department Representative, BoSS

All participated by speakerphone.

Presiding at the Hearing was Todd Thornton, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in its proposal to terminate the Claimant's benefits under the Aged/Disabled Waiver Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §504.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual §504.4
- D-2 Agency Documentation from Catholic Community Homemaker Services
- D-3 Closure letter dated March 11, 2008
- D-4 Fair Hearing Request dated April 17, 2008

VII. FINDINGS OF FACT:

- 1) Claimant was receiving Aged/Disabled Waiver services until noticed by the Department that they were being discontinued due to an unsafe physical environment (Exhibit D-3). This notice states, in pertinent part:

The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to **unsafe physical environment**. This decision is based on policy in the Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 504.4.

- 2) Policy from the Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 504.4 provides for discontinuation of services for various reasons, and provides the procedure in table format. The reason "Unsafe Physical Environment" lists the procedure as follows, in pertinent part:

CMA or HMA notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation of services and fair hearing rights to member. BoSS ensures that CMA, HMA, and BMS are notified as appropriate.

The policy also defines an unsafe physical environment as follows:

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.

- 3) [REDACTED] the Homemaker for the Claimant prior to the closure of services, did not appear for this hearing. The Department presented a memo (Exhibit D-2, page 4) that outlined the reasons that the Homemaker did not wish to return to the Claimant's home. This document was signed by the Homemaker, as well as by _____ and _____, RN, on February 28, 2008.
- 4) The first written allegation by the Homemaker is that she witnessed the Claimant and a visitor using crack cocaine. The Claimant and her sister deny that the Claimant has ever used crack cocaine.
- 5) The next two allegations in writing from [REDACTED] are that a visitor to the Claimant's home frequently brings a dog and expects the Homemaker to clean up after the dog. Additionally, it was alleged that the Claimant and her visitor expects the Homemaker to clean up cigarette ashes they drop on the floor. These allegations do not meet the policy definition of an unsafe physical environment, and testimony and evidence in these areas were not considered relevant for this reason.
- 6) The Homemaker additionally stated in writing that she was being followed by the police when running errands for the Claimant because a visitor in the Claimant's home was on house arrest for drugs. Testimony from the Claimant and her sister confirm that the visitor was on house arrest, but not for a drug charge. The Claimant testified that she believed that the visitor to her home was on house arrest for "running a stop sign." The Homemaker had also listed the criminal record and current incarceration of the Claimant's son as a reason she did not wish to return to the Claimant's home to provide services. Although closer than the housekeeping issues in COL #5, these allegations still fail to meet specific criteria in the unsafe physical environment definition.

- 7) The Homemaker also alleged, in writing, that she was asked to provide transportation for the Claimant to visit her incarcerated son, and to purchase items for the Claimant with a debit card with insufficient funds for the purchases. Again, these complaints do not match with the policy definition for an unsafe physical environment.
- 8) The Homemaker alleged has ordered hydrocodone and fentanyl pain patches that are depleted before refills are due. Notes from _____, RN (Exhibit D-2, page 8) on January 24, 2008 state, in pertinent part:

From Homemaker [*sic*]. Reports [*sic*] Client has requested her to refill Vicodin rx [*sic*]. HM [*sic*] thought she had more pills. Thought [*sic*] taking too many.

Testimony from the Department also indicated that the Homemaker was being asked to clean up an excess of beer cans, although the Homemaker herself was not present to testify to this. The Claimant and her sister both responded to the allegations of drug use by stating that the Claimant does not need to use illegal drugs because she has access to “legal drugs.”

- 9) The Homemaker made a final, written allegation that there was an incident at the Claimant’s home involving the police. According to the Homemaker’s written statement, a female visitor locked herself in the bathroom and accused a male visitor of assaulting her. Without direct testimony from the Homemaker, it is unclear if the Homemaker was present during this incident and if she herself was threatened with assault.
- 10) The Claimant and her sister deny the allegations of the Homemaker. The Claimant’s sister contended that the Homemaker made these allegations as retaliation for the Claimant’s complaints that the Homemaker was unreliable and did not show up when she was scheduled to work. The Department clarified that the Homemaker submitted to her supervisor – _____, RN – time sheets that were initialed by the Claimant on a daily basis and signed off on by the Claimant approximately every half month. The Department also contended that when the Homemaker made her allegations, she was unaware of the complaints by the Claimant against her. Testimony from the Claimant’s sister indicated that the Homemaker was late and/or unreliable almost immediately after she started on January 9, 2008, but that she waited until February 26, 2008 to officially complain to the Homemaker’s supervisor about her alleged tardiness.

VIII. CONCLUSIONS OF LAW:

- 1) Testimony provided contending that the Department’s Homemaker invented her allegations as a form of retaliation for complaints made by the Claimant against the Homemaker is unconvincing. The Claimant herself signed off on the schedule of the Homemaker, and waited over a month to complain about the purported unreliability of the Homemaker that allegedly began from the first day providing services.

- 2) Many of the allegations listed by the Homemaker in writing were irrelevant to the definition of an unsafe physical environment, or were unconvincing without the Homemaker appearing to testify in the hearing. However, the allegation of prescription medication abuse is valid. This is documented in notes from the Department prior to the Homemaker's request to discontinue services to the Claimant. The Claimant herself insinuated this, in her attempt to discredit the allegation of crack cocaine use. This behavior by the Claimant does meet the policy definition of an unsafe physical environment, and does justify the action of the Department to discontinue services to the Claimant.

IX. DECISION:

It is the decision of the State Hearings Officer to **uphold** the action of the Department to terminate Aged/Disabled Waiver Services.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this _____ Day of October, 2008.

Todd Thornton
State Hearing Officer