



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St
Charleston, WV 25313
304-746-2360 EXT 2227
March 31, 2008

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

Dear Ms _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 24, 2008 and continued on February 13, 2008. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your benefits under the Aged /Disabled (HCB) Title XIX Waiver Services Program due to unsafe physical environment.

In arriving at a decision, the State Hearings 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. These regulations specify that Aged/Disabled Waiver Program services can be discontinued as a result of an unsafe physical environment in the household. 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 placed in jeopardy. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual Section 590.3.)

The information which was submitted at your hearing revealed that an unsafe physical environment existed in your household which would place staff's welfare in jeopardy.

It is the decision of the State Hearings Officer to uphold the action of the Department to terminate your benefits and services under the Aged/Disabled Waiver Program.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Ikerd, BoSS
[REDACTED] Homemaker RN, Supervisor CWVAS

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

_____,
Claimant,

v.

Action Number: 05-BOR-07-BOR-1998

**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 January 24, 2008 and reconvened on February 13, 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 January 24 and February 13, 2008 on a timely appeal, filed August 24, 2007.

It should be noted here that the claimant's benefits has been continued 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:

_____, Claimant
_____, Father of Claimant
_____, Sister of Claimant
Kay Ikerd, RN, BoSS by speaker phone
[REDACTED] Homemaker RN, CWVAS Supervisor
[REDACTED] Homemaker for CWVAS
[REDACTED] Case Worker for CWVAS by speaker phone
_____, Sister of Homemaker [REDACTED]

Presiding at the Hearing was Jennifer Butcher, 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 decision to terminate the Claimant's services under the Aged/Disabled Waiver Program due to unsafe physical environment.

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 Notification from Central West Virginia Aging Services (CWVAS) to Bureau of Senior Services dated August 10, 2007
- D-3 Notification of discontinuance of services dated August 21, 2007
- D-4 Hearing Request dated August 24, 2007
- D-5 Written Service recording Log notes from Homemaker RN dated August 7, 2007 through August 13, 2007.
- D-6 Written Service recording Log notes from Homemaker Care Giver dated from August 8, 2007 through August 9, 2007.
- D-7 Written Service recording Log notes from Case Manager dated August 7, 2007 through August 27, 2007.
- D-8 Copy of Newspaper clipping from The [REDACTED] of [REDACTED] dated Saturday January 12, 2008.
- D-9 Written Service recording Log notes from Homemaker RN dated March 16, 2007 through July 23, 2007.

VII. FINDINGS OF FACT:

- 1) On August 10, 2007 Central West Virginia Aging Services, Inc sent a letter to Bureau of Senior Services requesting immediate closure of case regarding Claimant. (Exhibit D-2.)
- 2) On August 21, 2007 a notification letter was sent to Claimant from Bureau of Senior Services informing client that services will be discontinued due to unsafe physical environment according to Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 504.4 (Exhibit D-1).
- 3) Testimony from [REDACTED] Homemaker RN along with notes dated August 7, 2007 (Exhibit D-5) revealed that the homemaker called Ms. _____ on that date to report Claimant's father and brother had been arrested earlier that evening for selling drugs.
- 4) Homemaker recordings (Exhibit D-6) states she recalled from the events of August 8, 2007 that the father of Claimant confronted her with the statement "who ever reported them for selling drugs was going to get theirs" Claimant and her father stated they had family who could handle things.
- 5) At this time the Claimant and her father had questions for the homemaker and Case Manager of the statements they entered as evidence. The Homemaker and Case Manager were not present at the January 24, 2008 hearing. Hearing Officer granted a continuance so the two persons would be available to be questioned. The hearing reconvened on February 13, 2008.
- 6) On February 13, 2008 the hearing reconvened and information was reviewed.
- 7) The homemaker testified that she had never felt physically threatened by the claimant or her family members prior to the time in question but that she has since that time and that she would not feel safe going back into the home.
- 8) Department representative from BoSS entered into evidence a copy of the Saturday January 12, 2008 edition of the [REDACTED] (Exhibit D-8) which contained the following entry "the following individuals are to report at 1pm Friday January 18, 2008 before Judge [REDACTED] in the Courtroom of the [REDACTED] Courthouse Annex for arraignment. _____, delivery of a controlled substance and _____, delivery of a controlled substance."
- 9) Aged/Disabled Home and Community-Based Services Manual Section 504.4 (Exhibit D-1) states, in part:

The following are reasons for discontinuation of client's ADW services.

*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 client, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and threaten a homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including threatening animals.

b) The clients, his informals, household members, or others display an abusive use of alcohol and/or drugs that result in the above.

c) In cases of danger to staff, services may be discontinued immediately.

VIII. CONCLUSIONS OF LAW:

- 1) Policy requires termination if the client or other household members demonstrate verbally abusive behavior or threatens a homemaker. The homemaker felt unsafe after she was confronted about the situation with threats from both Claimant and her father.
- 2) According to policy all steps were followed in the discontinuation of services for the claimant.

IX. DECISION:

It is the decision of the State Hearing Officer to uphold the Agency's decision to discontinue the Claimant's services provided by Central West Virginia Aging Services and the Aged/Disabled, Title XIX (HCB) Waiver Program. The claimant has the right to reapply with another service agency.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of March, 2008.

**Jennifer Butcher
State Hearing Officer**