



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P.O. Box 1736  
Romney, WV 26757**

**Joe Manchin III**  
**Governor**

**Martha Yeager Walker**  
**Secretary**

February 27, 2008

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 19, 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 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. 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 member, his informals, household members, or others display an abusive use of alcohol and/or drugs and 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)

Information and testimony submitted at your hearing did provide sufficient evidence to reveal that there was abusive use of prescription drugs in the household.

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

Sincerely,

Sharon k. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
Kay Ikerd, BoSS  
[REDACTED] First Care Services

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

\_\_\_\_\_,  
**Claimant,**

v.

**Action Number: 08-BOR-2662**

**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 February 19, 2008 for \_\_\_\_\_ on a timely appeal filed December 17, 2007. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 500 of the West Virginia Department of Health and Human Resources.

**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:**

Claimants Witnesses:

\_\_\_\_\_, claimant  
\_\_\_\_\_, claimant's friend and helper

Department Witnesses:

Kay Ikerd, Bureau of Senior Services (BoSS) by speakerphone

[REDACTED] RN Supervisor, Pro Careers  
[REDACTED] Service Coordinator, Pro Careers  
[REDACTED] Case Manager, First Care Services  
[REDACTED] Homemaker

Presiding at the hearing was Sharon K. Yoho, 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 (HCB) Program due to an 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 WV Medicaid Aged & Disabled Waiver Program Incident Report, RN Supervisor
- D-3 Service Coordinator notes
- D-4 Homemaker written statement
- D-5 Memo from First Care Services recommending closure dated November 30, 2007
- D-6 Letter from Pro Careers advising Department of closure dated November 30, 2007
- D-7 Notice from BoSS to claimant of closure dated December 12, 2007

### **VII. FINDINGS OF FACT:**

- 1) The Claimant was receiving Aged & Disabled Waiver services, hereinafter ADW services, in October 2007 when the homemaker began feeling uncomfortable in the home. Episodes identified below were documented in the record keeping of the Case Management agency and testified to by persons who documenting the episodes.

- 2) The homemaker began smelling marijuana smoke on occasion when she entered the home. On October 25, 2007 there was an incident where two men came to the door posing as magazine salesmen. When nobody wanted to buy magazines the men asked the grandson if he had any pot to sell and he told them that he didn't do that stuff. After the two men left, many phone calls were made to and from the home discussing the possibility that these men were undercover law enforcement officers. The telephone calls indicated that these same men had been to the homes of some of their acquaintances. The homemaker reports finding a pipe (bowl) for smoking marijuana on a shelf when she was cleaning. When she told the claimant about it, the claimant said, "Someone is smoking pot in here."
- 3) The homemaker overheard a conversation in the home regarding the possibility of a man being able to get her a computer from Walmart for the claimant if she could get him an (8 Ball), which was described as being Crack Cocaine. The discussion overheard was regarding the possibility of the claimant's grandson being able to get the 8 Ball for \$250 and then trading it for the computer. The claimant stated during testimony that this overheard conversation was a joke.
- 4) On November 28, 2007 the claimant sent the homemaker to the pharmacy with a bag of pill bottles to get her prescriptions refilled. The homemaker left the bag with the pharmacist and returned to the home. The pharmacy later that day called the home and talked with the claimant about their inability to fill the Xanax prescription because a monthly supply had been filled on November 21, 2007 and there was only 3 pills left in the bottle. The claimant indicated that someone must have stolen them. When the homemaker went back to the pharmacy to get the medications, the pharmacist told her that when they were able to fill the Xanax again that they would be keeping them at the pharmacy. The claimant had a friend that was there at the home call around to see if she could find someone who could get her some Xanax. The girl tried calling more than one person and found someone who said he couldn't get any because the woman he gets his from was in the hospital. The girl did find someone who she could get some white ones from and advised the claimant that she would have to take two of them to equal the blue ones that she is prescribed. The claimant testified that there are lots of drug dealers in her trailer park, but that she was joking when she was asking the girl to call around to see if she could find her some Xanax.
- 5) The homemaker accompanied the claimant to the examination room at her doctor's office. The homemaker heard the claimant ask the doctor for more Lortabs. The doctor told her that she wasn't due for a new prescription for 14 days.
- 6) The incidents described above made the homemaker uncomfortable in the home. The homemaker noted that she didn't look in the bag that held the prescription bottles, but clearly was concerned that she might be accused of being the one stealing drugs from the claimant.
- 7) The claimant at the time had a 17 year old grandson, whom she has raised, living with her. Two other grandsons, both age 23 were staying in her home on and off. Her son, age 36, was also living in her home on and off. There was a constant stream of people coming in and out of the home visiting the members of the household and the homemaker found it difficult to get any work done in the home.

- 8) The homemaker agency advised the homemaker to make an Adult Protective Service referral. The homemaker decided that she did not want to work in that home anymore. The case management agency advised her to not go back. They issued notice to the Department that they were no longer going to be able to provide homemaker services to this claimant due to unsafe environment and recommended closure.
  - 9) The Department issued a closure notice to the claimant on December 12, 2007. The claimant has not had AD/W services since that date. She states that she still needs help and that the only person residing with her now is her 17-year-old grandson whom she has raised. The other grandsons and her son are no longer living with her.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 590.4 (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 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.

Deteriorating Condition and Potential for Injury: A provider is unable to meet the needs of a member whose deteriorating condition, without an informal support system in place, results in physical injury or the potential for injury. Provider may request that member choose another provider agency, if that agency is able to fulfill the needs of member.

### **VIII. CONCLUSIONS OF LAW:**

1. Testimony and evidence supports allegations of illegal use of prescribed medication in the home and suggests that there was also marijuana use going on in the home.
2. Aged/Disabled Home and Community-Based Services Manual Section 590.3 states that 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. While this homemaker was not specifically threatened or abused in this home, the claimant clearly was accusing someone of stealing her medication and this left the homemaker feeling vulnerable to being the accused.
3. Policy provides that an unsafe environment can be when the member, his informals, household members, or others display an abusive use of alcohol and/or drugs. The claimant was providing housing for her adult son and two adult grandsons who had friends coming and going to and from the home and raising suspicion of marijuana usage and theft and resale of prescribed medications. This atmosphere clearly would make an outsider feel unsafe and threatened.

### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the Agency's decision to terminate the Claimant's benefits 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 27th Day of February 2008.**

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**Sharon K. Yoho  
State Hearing Officer**