



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
203 East Third Avenue
Williamson, WV 25661

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

July 29, 2010

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held May 27, 2010. Your hearing request was based on the Department of Health and Human Resources' termination of your medical eligibility under the Aged/Disabled (HCB) Title XIX Waiver Services 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.

Continuation of services under the Aged/Disabled Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: The following are reasons for discontinuation of a member's ADW services: death; moving out of state; medical ineligibility; financial ineligibility; a member who no longer desires ADW services; no services being provided for 100 continuous days; an unsafe physical environment; a member's non-compliance with the ADW program; and deteriorating condition and the potential for injury. [Aged/Disabled (HCB) Services Manual Section 501.4.4]

Information submitted at your hearing reveals that no services were provided under the Aged and Disabled Waiver Services Program for 100 continuous days.

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

Sincerely,

Stephen M. Baisden
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Kay Ikerd, RN, WV Bureau of Senior Services

-----, [REDACTED] WV

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

-----,

Claimant,

v.

Action Number: 10-BOR-750

**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 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 May 27, 2010 on a timely appeal filed February 2, 2010.

II. PROGRAM PURPOSE:

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

III. PARTICIPANTS:

-----, Claimant

-----, RN, [REDACTED] Claimant's representative

-----, Claimant's son and witness

Brian Holstine, WV Bureau of Senior Services, Department's representative

Presiding at the hearing was Stephen M. Baisden, State Hearings Officer and member of the State Board of Review.

All parties participated by telephone conference call.

The Hearings Officer placed all participants under oath at the beginning of the hearing.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Agency was correct in its proposal to discontinue Claimant's benefits under the Aged and Disabled Home and Community-Based Waiver Program.

V. APPLICABLE POLICY:

Aged and Disabled Home and Community-Based Services Manual Sections 501

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 501.4.4
- D-2 Termination of Aged and Disabled Waiver Services notice dated January 14, 2010
- D-3 Letter to Claimant dated January 22, 2010

VII. FINDINGS OF FACT:

- 1) Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.4.4 (D-1) DISCONTINUATION OF SERVICES states that there are nine reasons for which a member may be discontinued from the Aged and Disabled Waiver (ADW) Program. Those reasons are as follows: 1) Member's death; 2) Member moves out of state; 3) Member is determined to be medically ineligible; 4) Member is determined to be financially ineligible; 5) Member no longer desires the ADW services; 6) No services have been provided for the member for 100 continuous days; 7) Member resides in an unsafe physical environment; 8) Member is not compliant with the program; 9) Member is in a deteriorating condition and there is the potential for injury. Reason #6 above states that an example of a situation wherein no services have been provided for 100 continuous days may be if a member has been placed in a long-term care or rehabilitation facility.
- 2) Department's representative testified that Claimant's case management agency, [REDACTED] WV, sent a Termination of Aged and Disabled Waiver Services form (Exhibit D-2) to the WV Bureau of Senior Services on January 14, 2010. The name and address fields of this form are completed with Claimant's name and mailing address. At the section of the form which states, "The above referenced Aged and Disabled Waiver recipient has terminated services for the reasons listed below:" the person who completed the form selected "Client no longer desires services – Member admitted into nursing home." The form states that Claimant entered into the [REDACTED] on October 2, 2009. It further states that the last day of services was September 30, 2009. There were 105 days between the last day of services to the day the form was completed.
- 3) The WV Bureau of Senior Services mailed a letter to Claimant on January 22, 2010. (Exhibit D-3.) This letter explained that Claimant was discontinued from the Aged and Disabled Waiver Services Program because no services had been provided for 100 days. It stated that the decision was based on the Aged and Disabled Waiver Policy and Procedures Manual, chapter 501, section 4.4.

- 4) Claimant's witness, her son, testified that while Claimant was a member of the ADW program, she developed compression fractures in her spine, which necessitated her admission into the [REDACTED] Toward the end of her stay at this facility, she developed breathing problems which resulted in her admission into the [REDACTED] Hospital, [REDACTED] This caused a disruption in her rehabilitation schedule, and she was not released from the [REDACTED] until January 21, 2010.

VIII. CONCLUSIONS OF LAW:

- 1) Policy dictates that an Aged/Disabled Waiver Program member will be terminated from the program if no services have been provided in 100 continuous days.
- 2) Claimant was discontinued from the Aged/Disabled Waiver Program after no services were provided from September 30, 2009 to January 14, 2010, a period of time which exceeds 100 days.
- 3) The Department was correct in its decision to discontinue Claimant's membership in the Aged/Disabled Waiver Program after not providing services in 100 continuous days.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to discontinue the Claimant's eligibility 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 29th Day of July, 2010.

Stephen M. Baisden
State Hearing Officer