



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
227 Third St.  
Elkins, WV 26241

Joe Manchin III  
Governor

January 20, 2005

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held January 19, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Medicaid Title XIX (Home & Community-Based) Waiver 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.

The Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who continue to meet all eligibility requirements. Eligible individuals are those who qualify medically for a nursing facility level of care but have chosen the Waiver Program as a means to remain in their home where services can be provided. A client in the ADW Program must receive homemaker services in order to retain eligibility. [Aged/Disabled (HCB) Services Manual § 570-570.1b and 503].

Information submitted at your hearing revealed that no homemaker services had been provided to you for 100 days. Policy states that a discontinuation of services is warranted when a client has not received services for 100 continuous days.

Therefore, it is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
WVMI  
BoSS  
[REDACTED] CCIL

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES  
SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**NAME:** \_\_\_\_\_  
**ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on January 20, 2005 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 19, 2005 on a timely appeal filed December 16, 2004.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have been continued pending the results of this hearing.

All persons giving testimony were placed under oath.

**II. PROGRAM PURPOSE:**

The Program entitled **Medicaid Title XIX Waiver (HCB)** is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health and 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's wife

\_\_\_\_\_, Claimant's son

\_\_\_\_\_ Case Manager, CCIL

\_\_\_\_\_ Select In-Home Services

Kay Ikerd, RN, BoSS (participating telephonically)

Presiding at the hearing was Pamela L. Hinzman, 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 Claimant continues to be eligible for services under the Aged/Disabled Waiver (HCB) Program.

**V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual Sections 503 and 590

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

- D-1 Aged/Disabled Home and Community Based Services Manual § 503 and 590.3
- D-2 Letter from Coordinating Council for Independent Living dated November 29, 2004
- D-3 Letter from Bureau of Senior Services dated December 3, 2004

**VII. FINDINGS OF FACT/CONCLUSIONS OF LAW:**

- (1) A letter dated November 29, 2004 from Coordinating Council for Independent Living to Bureau of Senior Services (D-2) indicates that the Claimant had not utilized homemaker services for 100 continuous days. The Claimant was hospitalized on July 26, 2004 and was transferred to a nursing facility on October 25, 2004.
- (2) The Bureau of Senior Services sent the Claimant a letter on December 3, 2004 (D-3) advising of the intent to discontinue eligibility for Aged/Disabled Waiver services based on policy located in Section 590.3 of the Aged/Disabled Waiver Home and Community Based Services Manual. This policy states that discontinuation of services is warranted when a client has not received homemaker services for 100 continuous days.
- (3) Mr. [REDACTED] did not dispute that the Claimant was without homemaker services for 100 days, but testified the Waiver Program is designed to keep individuals out of nursing homes. He said the Claimant would have been released from the nursing facility prior to the lapse of 100 days, but the Claimant's wife and primary caretaker was diagnosed with and treated for cancer. Since Mrs. \_\_\_\_\_ was unable to provide care for her husband during her own treatment, the Claimant's physician would not release him from the nursing facility until an adequate support system was in place. On December 13, 2004, the Claimant notified Coordinating Council for Independent Living that his wife had regained the ability to provide in-home support.
- (4) Mr. \_\_\_\_\_ stated his father will have to be readmitted to a nursing home if he loses eligibility for the Aged/Disabled Waiver Program. He stated this will likely cost the state more money and seems counterproductive.
- (5) Ms. Ikerd testified that the Claimant's situation is unfortunate, but policy indicates that 100 days without homemaker services is the limit. She stated policy incorporates no hardship clauses to address the Claimant's situation.
- (6) Aged/Disabled Home and Community Based Services Manual § 503 (D-1) states:  
Homemaker is not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program.
- (7) Aged/Disabled Home and Community Based Services Manual § 590.3 (D-1) states that a discontinuation of services must occur when the client has not received services for 100 continuous days.

### **VIII. DECISION:**

In order to qualify for Aged/Disabled Waiver services, an individual must have an ongoing need for homemaker services.

It has been determined that the Claimant did not receive services for 100 continuous days during the time he had been admitted to a hospital and nursing facility. While the Claimant's situation is unfortunate, policy is clear that a discontinuation of services must occur when a client has not received homemaker services for 100 continuous days.

After reviewing information presented during the hearing and the applicable policy and regulations, it is the ruling of the State Hearing Officer to **uphold** the Agency's proposal to terminate benefits under the Aged/Disabled Title XIX (HCB) Waiver Program.

### **IX. RIGHT OF APPEAL**

See Attachment.

### **X. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.