



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555-2590

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 25, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 10, 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. A discontinuation of services must occur when the client has not received services for 100 continuous days. [Aged/Disabled (HCB) Services Manual ' 570- 570.1b, 503 and 590].

Information submitted at your hearing revealed that you have not received homemaker services for a period that exceeds 100 continuous days (8/3/04 to present). As a result, the Department has appropriately proposed that your benefits and services through the Aged & Disabled Waiver Program be terminated.

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,

Thomas E. Arnett
State Hearing Office
Member, State Board of Review

Pc: Chairman, Board of Review
BoSS

CWVAS

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

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on March 25, 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 March 10, 2004 on a timely appeal filed November 17, 2004.

It should be noted here that benefits under the Medicaid Title XIX Waiver (HCB) Program have 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 daughter/representative (appeared telephonically from her home in [REDACTED] WV)
Kay Ikerd, RN, BoSS (appeared telephonically from BoSS's office in Charleston, WV)
Presiding at the hearing was Thomas E. Arnett, 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:

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

- D-1 Aged/Disabled Home and Community Based Services Manual ' 503 and 590.3.
- D-2 FAX from CWVAS to BoSS dated November 10, 2004, Closure recommendation due to Over 100-days off of program.
- D-3 Notice dated November 12, 2004 from BoSS that Medicaid Aged and Disabled Waiver services will discontinue.

VII. FINDINGS OF FACT/CONCLUSIONS OF LAW:

1. On November 11, 2004, [REDACTED] Case Manager, Central West Virginia Aging Services (CWVAS) notified the Bureau of Senior Services (BoSS) that the Claimant had not utilized homemaker services for 100 continuous days (D-2).
2. In response to the notice from CWVAS, BoSS sent the Claimant a letter on November 12, 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. Kay Ikerd reviewed applicable policy and testified that homemaker services provided through the Aged and Disabled Waiver Program are not an optional service and must be received as a condition of continued eligibility.
4. _____ testified that her mother was admitted to a long term care facility on August 3, 2004 to receive rehabilitative services. She stated that while her mother is still residing in the nursing facility, this is not a permanent situation and that her mother will require services through the Aged & Disabled Waiver Program when she returns home.
5. Aged/Disabled Home and Community Based Services Manual ' 503 (D-1) states that Homemaker services are not an optional service. A client in the ADW Program must receive homemaker services to remain eligible for the program.
6. 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:

Policy provides that an individual must receive homemaker services to remain eligible for the Aged and Disabled Waiver Program and that a discontinuation of services must occur when they have not received services for 100 continuous days.

Evidence received at the hearing confirms that the Claimant has not received homemaker services for 100 continuous days while receiving rehabilitative services in a long term care facility. While the Claimant=s situation is unfortunate, policy fails to provide any stipulations under which eligibility can be continued when homemaker services are not received for a period in excess of 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.