



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

Martha Yeager Walker
Secretary

December 22, 2005

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 20, 2005. 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.

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 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 failed to provide sufficient evidence to reveal that an unsafe physical environment exists in your household.

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

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review
Caregiving and Advocacy for the Rural Elderly
BoSS

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

_____,

Claimant,

v.

Action Number: 05-BOR-6161

**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 December 22, 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 December 20, 2005 on a timely appeal filed July 12, 2005. The hearing was originally scheduled for October 4, 2005 but was rescheduled at the Claimant's request.

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:

[REDACTED], Claimant
[REDACTED] Case Manager, CWVAS
Libby Boggess, RN, BoSS (participating telephonically)
Kathie Zuspan, (observing telephonically from BoSS)

Presiding at the hearing was Pamela L. Hinzman, 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 590.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 590.3
- D-2 Notice of discontinuation dated May 23, 2005
- D-3 Notices of discontinuation dated May 10, 2005
- D-4 Letter from CARE, Inc. dated May 10, 2005
- D-5 Letter from CARE, Inc. dated May 9, 2005
- D-6 Letter from CARE, Inc. dated March 9, 2005
- D-7 Verification of returned mail received by BoSS on May 17, 2005

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving Aged & Disabled Waiver, hereinafter ADW, benefits in March 2005 in [REDACTED] County when a homemaker reported that the Claimant had used illegal drugs while she was present in the home. This information, along with allegations from the homemaker that the Claimant may be selling drugs from her home, is documented in March 9, 2005 correspondence from CARE, Inc. (D-6).

- 2) A second letter from CARE, Inc. dated May 9, 2005 (D-5) states that the Claimant had admitted she had used illegal drugs as alleged by the homemaker. The letter also states, in part:

Since that time we have staffed the case and there continues to be issues in the home. Client has had two more homemakers and both have refused to return.

Client frequently refuses to allow entry into the home or sends the homemaker away stating she does not need them. The last homemaker alleges client told her she now has a firearm in the home for protection.

- 3) The Agency sent a termination letter to the Claimant on May 23, 2005 (D-2) which states, in part:

The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to unsafe physical environment. This decision is based on policy in the Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 590.3.

- 4) Ms. [REDACTED] testified that she had visited the Claimant on four separate occasions and never feared for her safety or witnessed any type of trafficking in the household. She stated that she was aware that the Claimant had admitted to illegal drug use and had related her concerns about the situation to the Claimant. Ms. Boggess responded that the homemaker had been in the household on a more frequent basis.

- 5) Ms. Meadows testified that during the completion of a PAS assessment, the Claimant had admitted that she obtained and used marijuana to control her pain because she no longer had a physician and was unable to obtain pain medication. Ms. _____ concurred with Ms. Meadows' testimony and admitted that she had used illegal drugs in order to ease her pain. She stated that the drug use was a "one-time" situation and that the only traffic in her home was her niece and nephew who helped her prepare meals since she had physical difficulty getting out of bed. She testified that it was her decision that the other homemakers not return to her household and that she has never had a gun in her home.

- 6) Aged/Disabled Home and Community-Based Services Manual Section 590.3 (D-1) states, in part:

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 informants, 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 results in the above.
- C. In cases of danger to staff, services may be discontinued immediately.

III. CONCLUSIONS OF LAW:

1. The Claimant admitted that she used illegal drugs in her household during the time she was receiving homemaker services through the Aged/Disabled Waiver Program.
2. Documentation indicates that the Claimant's homemaker reported the drug use and that the homemaker's request that she be removed from the Claimant's household was granted.
3. 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. This may include, but is not limited to, circumstances in which the client or others display an abusive use of alcohol or drugs that results in, but is not limited to, sexually inappropriate behavior, verbally and/or physically abusive behavior, or threats with guns, knives, or other potentially dangerous weapons.
4. While the Claimant admitted to illegal drug use, no evidence or testimony was provided to indicate that any sexually inappropriate, verbally or physically abusive or threatening behavior took place in the household. No testimony was provided to corroborate allegations of drug trafficking and the information in Exhibit D-5 only specifies that the Claimant had denied household entry to other homemakers. No former homemakers were present to testify at the hearing.
5. Evidence and testimony presented during the hearing do not support the existence of an unsafe physical environment in the Claimant's household because the Agency's documentation contains no specific accusations of threats, abuse or fear for staff welfare as a result of the admitted drug use.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Agency's proposal 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 22st Day of December, 2005.

Pamela L. Hinzman
State Hearing Officer