



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

December 21, 2005

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 6, 2005. Your hearing request was based on the Department of Health and Human Resources' proposal to discontinue your benefits and services under the Medicaid, Aged/Disabled 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 policy that governs the Aged & Disabled (HCB) Title XIX Waiver Services Program provides circumstances under which the Department can recommend a discontinuation of services. Among the circumstances provided is an 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. [Aged/Disabled (HCB) Services Manual 590.3 (11/1/03)].

The information which was submitted at your hearing reveals that Aged & Disabled Waiver services cannot be provided in your home due to an unsafe physical environment.

It is the decision of the State Hearing Officer to **uphold** the proposal of the Department to discontinue / terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program.

Sincerely,

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

cc: Erika H. Young, Chairman, Board of Review  
BoSS  
CCIL

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

\_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 05-BOR-6502**

**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 21, 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 6, 2005 on a timely appeal, filed August 23, 2005.

It should be noted here that the Claimant's benefits under the Medicaid Title XIX Waiver (HCB) Program have continued pending a hearing decision.

**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 & 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:**

(by phone)

[REDACTED] CM, CCIL  
[REDACTED] Homemaker RN, Pro Careers, Inc.  
[REDACTED] RN, Pro Careers, Inc.  
Linda Wright, RN, BoSS (by phone)

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

### **IV. QUESTIONS TO BE DECIDED:**

The question to be decided is whether the Department is correct in their proposal to terminate benefits and services through the Aged/Disabled Waiver (HCB) Program due to an unsafe physical environment.

### **V. APPLICABLE POLICY:**

Aged/Disabled Home and Community Based Services Manual 590.3.

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

#### **Department's Exhibits:**

- D-1 Correspondence from [REDACTED] RN, BSN, Pro Careers Inc. dated 7/26/05
- D-2 Correspondence from [REDACTED] BSW, CCIL, dated 8/8/05.
- D-3 Correspondence from [REDACTED] Director, Medicaid Program Operations dated 8/18/05.
- D-4 Correspondence from \_\_\_\_\_ to Ms. [REDACTED] (received by BoSS on 8/23/05).

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

- 1) On August 18, 2005, the Department, through the Bureau of Senior Services, notified the Claimant that services received under the Medicaid Aged and Disabled Waiver Program were being discontinued due to an unsafe physical environment (exhibit D-3).
- 2) The Department presented testimony and documentation (exhibits D-1 and D-2) to show that Claimant's son continually calls and visits the Claimant asking for money and pain medications. He has threatened to kill the Claimant and himself while the homemaker was in the home and pointed a gun to his head clicking the trigger 3 times. The homemaker also witnessed the Claimant's son throwing a phone and hitting the Claimant in the face.

- 3) The Claimant testified that the homemaker who reported these episodes was untruthful. Upon hearing additional testimony from [REDACTED] and [REDACTED] that there have been several documented episodes from other homemakers involving the Claimant's son, the Claimant stated that she didn't want to hear anymore and prematurely terminated her participation in the hearing by hanging up her phone.
- 4) The Aged/Disabled Home and Community Based Services Manual 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, the following circumstances:
  - A. The client, his informals, 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 client, 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.

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

- 1) The Aged & Disabled Waiver policy provides circumstances under which the Department can discontinue services. Among the circumstances that allow for a discontinuation of services is an unsafe physical environment.
- 2) Evidence provided by the Department confirms that the health and safety of individuals providing services would be jeopardized if Aged and Disabled Waiver services continued. The Department is correct in their recommendation to discontinue services due to an unsafe physical environment.

#### **IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of the Agency to terminate your benefits and services under the Aged/Disabled Title XIX (HCB) Waiver Program based on an unsafe physical environment.

#### **X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 21st Day of December, 2005.**

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**Thomas E. Arnett  
State Hearing Officer**