



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

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

September 26, 2006

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

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 31, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services 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.

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 ' 503 & 590].

The information which was submitted at your hearing reveals that you did not receive homemaker services for a period that exceeds 100 continuous days (January 22, 2006 through May 12, 2006). As a result, the Department has correctly proposed that your benefits and services through the ADW Program be terminated/discontinued.

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

Sincerely,

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

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

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 06-BOR-1873**

**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 September 26, 2006 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 August 31, 2006 on a timely appeal filed May 10, 2006.

**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:**

\_\_\_\_\_, Claimant (Participate telephonically)  
\_\_\_\_\_, Claimant son (Participated telephonically)  
\_\_\_\_\_, CM, MVA  
Brian Holstine, LSW, BoSS (Participated telephonically)  
\_\_\_\_\_, LSW, Boss (Observed telephonically)

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(s) to be decided is whether the Agency is correct in its proposal to terminate services under the Aged/Disabled Waiver (HCB) Program based on 100 days without services.

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

Aged/Disabled Home and Community-Based Services Manual Section 503 & 590.3

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

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

- D-1 Aged & Disabled Waiver Service Policy, Chapter 503 & 590.3
- D-2 Correspondence from \_\_\_\_\_, MVA Case Management, to \_\_\_\_\_, RN  
(Received by BoSS on 5/1/06)
- D-3 Notice of Closure from BoSS dated May 2, 2006.

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

- 1) On or about May 1, 2006, \_\_\_\_\_, MVA Case Management, notified the Department's Bureau of Senior Services, hereinafter BoSS, that the Claimant had not utilized homemaker services for a period in excess of 100 continuous days (Exhibit D-2). According to Ms. \_\_\_\_\_, the Claimant was out of her home from January 22, 2006 and did not return until May 12, 2006.
- 2) In response to the notice from MVA Case Management, BoSS notified the Claimant in correspondence dated May 2, 2006 that her benefits and services through the Aged & Disabled Waiver Services Program, hereinafter ADW Program, was discontinued because "no services have been provided for 100 days." This correspondence cites Section 590.3 of the ADW policy manual in support of the Department's action.

- 3) Testimony received at the hearing confirms the information included in the correspondence from MVA Case Management (D-2) and as a matter of record, the Claimant and her son agreed that the Claimant was out of her home and in a nursing facility during the period identified by Ms. [REDACTED].
- 4) Brian Holstine testified that ADW Policy states that homemaker services are not an optional service and must be provided as a condition of continued eligibility for benefits and services through the ADW Program.
- 5) The Aged & Disabled Home and Community Based Services Manual, Chapter 503, 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) The Aged & Disabled Home and Community Based Services Manual, Chapter 590.3, provides a list of reasons for which a client's ADW services can be discontinued. Included in this list is - "if the client has not received services for 100 continuous days." This policy goes on to state – for example, extended placement in long-term care or rehabilitation facility.

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

- 1) 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.
- 2) Evidence received at the hearing reveals that the Claimant was out of her home and did not receive homemaker services for a period in excess of 100 continuous days.
- 3) Whereas the Claimant was out of her home and did not receive homemaker services for a continuous period of 100 days, the Department has acted within policy guidelines in proposing termination of the Claimant's benefits and services through the ADW Program.

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

It is the decision of the State Hearing Officer to **uphold** the Agency's proposal to terminate your benefits and services 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 26th day of September, 2006.**

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**Thomas E. Arnett  
State Hearing Officer**