



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
200 Davis Street
Princeton, WV 24740

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 13, 2006

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held September 26, 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.

Eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. One of these regulations provides that Aged/Disabled Waiver Services are to be discontinued when no services have been provided for 100 continuous days; for example, extended placement in a long-term care or rehabilitation facility. (Section 590.3 of Title XIX Aged/Disabled Home and Community Based Services Waiver, Policy and Procedures Manual, 11-1-03)

The information which was submitted at your hearing reveals that when you were notified on June 2, 2006 of the proposed termination of Aged/Disabled Waiver services, you had been continuously without these services due to an extended stay in a Nursing Home or hospital setting for 130 days.

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

Sincerely,

Cheryl McKinney
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
BOSS
WVMI
Mountain Heart Community Services

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

_____ Claimant,

v.

Action Number: 06-BOR-2176

**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 September 26, 2006 on a timely appeal filed June 15, 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's social worker – participated by telephone
_____, Claimant's niece – participated by telephone
Libby Boggess, BOSS – participated by telephone

Presiding at the hearing was Cheryl McKinney, 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 Department is correct in its proposal to terminate the Claimant's benefits and services under the Aged & Disabled (HCB) Waiver Services Program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual Section 590.3

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Claimant's request for hearing
- D-2 Aged/Disabled Home and Community Based Services Manual Sections, Chapter 500, Pages 3, 25, 26, and 27
- D-3 Memorandum dated June 22, 2006 from Libby Boggess to _____
- D-4 Copy of envelope dated June 13, 2006
- D-5 Faxed information dated September 26, 2006 containing packet of information Including notification letters

VII. FINDINGS OF FACT:

- 1) On May 31, 2006 MountainHeart Community Services Agency faxed a letter to the Department's Bureau of Senior Services indicating that the claimant had been out of the home for 100 days. The letter contained statements indicating MountainHeart was requesting case closure, and informed the Bureau of Senior Services that the claimant was currently being treated in Wyoming Continuous Care Center in New Richmond. MountainHeart Community Services Agency added a note at the bottom of this letter indicating the claimant's last date of Homemaker services was January 23, 2006. (D-5)

- 2) On June 2, 2006 Bureau of Senior Services sent a letter to the claimant advising her that Waiver services were being discontinued because no services had been provided to her for 100 days. Claimant had been without services for 130 days. (D-5)
- 3) On June 8, 2006 Claimant signed a "Request for Hearing" form and submitted it to Bureau of Senior Services, indicating she wished to participate in her hearing by telephone conference. She indicated she disagreed with services being discontinued because she has been in a Nursing/Rehabilitation Center and had several hospital stays, which has delayed her plan to return home to live. She indicated she wanted her Waiver case left open to allow her to return home in the future. (D-1)
- 4) Testimony from claimant's Social Worker did not dispute Bureau of Senior Services statement that claimant had been without Aged/Disabled Waiver services for more than 100 days on June 2, 2006 when the termination letter was sent. The Social Worker indicated their intention when claimant entered the Nursing Home was to stabilize and return her to her home before the 100 day time frame expired. Her testimony also indicated that claimant had several setbacks during this time and was hospitalized at least six separate times, which prevented her from being able to return to her home. The Social worker testified that she was aware of the policy that required closure after 100 days without services, but was hoping that some type of allowance could be made due to claimant's unexpected turn of events.
- 5) Bureau of Senior Services testified that the Aged/Disabled Waiver manual makes no allowance for exceptions to be made in applying the policy requiring discontinuance of Waiver services to someone who has been without service for 100 continuous days.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged/Disabled Waiver Program policy is clear and requires discontinuation of Waiver services to individuals when no services have been provided for 100 continuous days, after proper notification. The policy does not provide any allowances for exceptions to be made.
- 2) The Department acted correctly in their action to discontinue Aged/Disabled Waiver services to the claimant, as she had not received these services for 130 continuous days.

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 13st day of October, 2006.

**Cheryl McKinney
State Hearing Officer**