



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 W Washington St.
Charleston, WV 25313
304-746-2360

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 30, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held March 5, 2009. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your services under the Aged/Disabled Waiver program due to non-compliance.

In arriving at a decision, the State Hearings 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. Some of these regulations state as follows: Failure to comply with program requirements will result in a termination of services (West Virginia Income Maintenance Manual § 501.4.4).

The information submitted at your hearing revealed that you failed to comply with program requirements.

It is the decision of the State Hearings Officer to **uphold** the decision of the Department to terminate your Aged/Disabled services due to non-compliance.

Sincerely,

Jennifer Butcher
State Hearings Officer
Member, State Board of Review

Cc: Erika H. Young, Chairman, Board of Review
Bureau of Senior Services
West Virginia Medical Institute

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

-----,

Claimant,

v.

Action Number: 08-BOR-2643

**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 March 30, 2009 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 5, 2009 on a timely appeal, filed December 29, 2008.

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
-----, Claimant's Advocate and Friend
-----, Claimant's Friend and Former Caregiver
-----, Claimant's Friend and Former Caregiver
Kay Ikerd, RN, Bureau of Senior Services

Presiding at the Hearing was Jennifer Butcher, 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 or not the Department's decision to terminate Claimant's services under the Aged/Disabled Waiver program is correct.

V. APPLICABLE POLICY:

Aged/Disabled Waiver Policy Manual § 501.4.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy Manual § 501.4.4
- D-2 Homemaker Agency Transfer Request Form dated October 24, 2008
- D-3 Correspondence to Claimant from Bureau of Senior Services dated October 27, 2008
- D-4 Potential Closure Letter dated November 20, 2008
- D-5 Termination Letter dated December 5, 2008
- D-6 Hearing Request Form received December 29, 2009

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) Claimant had been receiving services through the Aged/Disabled Waiver program under Personal Options and requested a change to a case management agency. A request form was submitted to the Bureau of Senior Services (BoSS) on October 24, 2008 (D-2).
- 2) A letter was issued to Claimant dated October 27, 2008 that read in part (D-3):

In response to your request to transfer to a different Case management agency, I have enclosed a list of agencies certified to provide services in your county.

Please review the list and choose only one agency; sign and return the form in the enclosed envelope.

You will also find enclosed a release of information form. In order to process the transfer I will also need this back. If both forms are not returned, I cannot complete the transfer request.

- 3) A potential closure letter dated November 20, 2008 was issued to Claimant which read in part (D-4):

This letter is to notify you of the potential closure of your Aged and Disabled Waiver services. This is based on noncompliance with program instructions due to your refusal to sign the Consent to Release Information Form. If you want to continue to receive Aged and Disabled Waiver Services, you must sign the attached Consent to Release Information Form and return it to the Bureau of Senior Services no later than December 4, 2008. Failure to comply with this request will initiate a closure of your Aged and Disabled Waiver Services.

- 4) When Claimant failed to return the Release of Information Form by the due date, a termination letter was issued December 5, 2008 which read in part (D-5):

The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to noncompliance with ADW program.

- 5) -----, Claimant's advocate, testified that they were unclear as to the actual reason for the termination of Claimant's services. The termination letter dated December 5, 2008 did not specify what Claimant was noncompliant about and they felt he was denied due process (D-5). ----- stated Claimant did receive the two (2) letters prior to the December 5, 2008 termination letter from BoSS (D-3 and D-4).

- 6) ----- stated the reason Claimant did not sign the Release of Information Form was because there were false accusations against him in his record that he did not wish to be transferred to a new case management agency. The accusations were gossip and hearsay and should not be in Claimant's records. ----- also stated the requirement of Claimant signing the Release Form was not in policy.

- 7) Kay Ikerd, RN, with the Bureau of Senior Services testified that the requirement to sign the Release of Information Form was not addressed in policy or state code but that it is procedural rule that everyone participating in the Aged and Disabled Waiver program must abide by. The Release is needed when there is a change made in case management agencies so that pertinent background information and history with previous agencies is made available to the new agency.

- 8) Aged/Disabled Waiver Policy Manual § 501.4.4 states:

Discontinuation of Services

****Member Noncompliance with Program:** Effective 13 days after the date of the notification letter, if member does not request a hearing

Case management agency (CMA) or Homemaker Agency (HMA) notifies BoSS in writing the reasons for discontinuation of services and steps taken. BoSS

sends notification of discontinuation of services and fair hearing rights to member. BoSS ensures that CMA, HMA and Bureau of Medical Services (BMS) are notified as appropriate.

For Personal Options, the Fiscal/Employer Agent-Resource Consultant (F/EA-RC) notifies BoSS in writing the reasons for discontinuation of services and the steps taken. BoSS sends notification of discontinuation of services and fair hearing rights to member. BoSS ensures that the F/EA-RC and BMS are notified as appropriate.

****Member Noncompliance with Program:** The member is consistently noncompliant with Plan of Care (POC).

VIII. CONCLUSIONS OF LAW:

- 1) Claimant and his representative admit that Claimant received the letters from Bureau of Senior Services dated October 27, 2008 and November 20, 2008 requesting Claimant to sign and return Release of Information Form. Claimant also admitted that he failed to submit a signed Release.
- 2) Claimant was properly notified by BoSS of the requirements needed to process a change to a Case Management agency. Claimant failed to respond to BoSS's repeated requests for a signed Release.
- 3) Claimant's services through the Aged/Disabled Waiver program were correctly terminated due to his non-compliance with program requirements.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to terminate Claimant's services under the Aged/Disabled Waiver program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 30th Day of March, 2009.

**Jennifer Butcher
State Hearing Officer**