



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Ave.
Lewisburg, WV 24901**

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

December 15, 2006

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held December 5, 2006. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate services under the Aged Disabled Waiver, A/DW, 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 A/DW Program is based on current policy and regulations. Some of these regulations state as follows: The following are reasons for discontinuation of a member's ADW services. One reason listed is member no longer desires services. (Aged/Disabled (HCB) Services Manual 590.3 (11/1/03).

The information which was submitted at your hearing revealed that you requested your case closed. Benefits have continued as a result of the hearing request and you no longer want your case closed.

It is the decision of the State Hearing Officer to reverse the proposed action of the Department to terminate services under the A/DW Program.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Libby Boggess, BoSS
[REDACTED], CCIL

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

_____,
Claimant,

v.

Action Number: 06-BOR-2908

**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 5, 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 December 5, 2006 on a timely appeal, filed September 7, 2006.

It should be noted here that the claimant's benefits have been continued pending a hearing decision.

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
_____, Homemaker, Mountain State Home Health
_____, RN, Mountain State Home Health
_____, Clinical Services Manager, CCIL
Libby Boggess, RN, BoSS (By Telephone)

Presiding at the Hearing was Margaret M. Mann, 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 was correct in their decision to terminate benefits at the client's request.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Service Manual §504.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community based Services Manual §504.4
- D-2 Notification Letter dated 07/14/06
- D-3 Notification Letter dated 09/01/06
- D-4 Letter to BoSS from _____ dated 07/20/06
- D-5 Case Management Progress Notes from 05/15/06 through 07/20/06

VII. FINDINGS OF FACT:

- 1) The claimant was sent a notice dated September 1, 2006 from Bobby Reynolds, Director, Medicaid Program Operations. The letter reads in part: The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to client request. (D-3) This letter followed a similar letter dated July 14, 2006 which had been mailed to the claimant. (D-2) The July 14th letter had been sent to the wrong address.
- 2) On May 15, 2006, _____ of CCIL, the case manager at the time, completed a home visit to conduct an annual assessment. On June 15, 2006, the claimant was not home for a medical reevaluation by WVM. The claimant wanted the WVM RN to come at one specific time and not during a general timeframe. The WVM assessment procedure was discussed with the claimant July 12, 2006. He then requested his waiver case closed. One of the reasons given was that he does not want the state to take his property. (D-4)

- 3) On July 20, 2006, the claimant signed a letter Ms. [REDACTED] had written to close his case. It reads in part "On July 12, 2006, [REDACTED], Licensed Social Worker with Coordinating Council for Independent Living (CCIL), [REDACTED], Register Nurse with Mountain State Home Health Services, met with you about accepting West Virginia Medical Institute (WVMI) nurse to enter your home to complete your medical re-evaluation to continue your Medicaid Waiver Services." An additional sentence reading "You refused to allow the WVMI nurse into your home and you want to cancel your Waiver Services per your request" had been marked through by Mr. [REDACTED]. (D-5)
- 4) A notice dated 07/20/06 was sent by [REDACTED] to Linda Wright at BoSS which reads in part "As per program requirements, this letter is to serve as request/notification of closure for [REDACTED].....The reason for the request/notification of closure is client no longer desires services and client non-compliant with Program." A closure notice was sent to the claimant as outlined in #1 above. (D-4) The claimant requested a hearing timely and benefits have continued.
- 5) Testimony from the claimant revealed that he disagreed with some of the case recordings leading up to the closure notice. There are entries in the log where the claimant would not answer his phone. He stated it takes a long time to get to the phone. The claimant denied refusing to have the WVMI nurse come for the reevaluation. Mr. [REDACTED] stated that he did tell Ms. [REDACTED] he wanted his case closed because of the understanding he had about his property being taken by the state because he was on the program. He has requested his case be reinstated.
- 6) [REDACTED] discussed the home visit with [REDACTED] on July 12, 2006. The issue of the WVMI reevaluation was discussed. At that time, the claimant was upset and wanted the nurse to come at a specific time. If she was two hours late and he was lying down – he may not hear the door. He was upset about that and stated if they could not give him a specific time, he did not want to fool with it. He did request he wanted his case closed. Later, he stated he would let them come but he needed to know what time.
- 7) Testimony from Ms. Boggess revealed that the WVMI nurse gives a time period because of time needed to travel to different appointments and also travel interruptions such as traffic flow.
- 8) Testimony from Ms. [REDACTED] revealed that the claimant was going through a lot of stress at the time he requested his case closed. His credit card had been stolen and a large amount charged to his account.
- 9) The claimant does not have a current medical evaluation on file.
- 10) Aged/Disabled Home and Community-Based Services Manual Section 590.3 reads in part: Notice for discontinuation of a member's services must be sent to BoSS. The following are reasons for discontinuation of services.

Reason: Member No Longer Desires Services.

Effective Date: 13 days after the date of the notification letter, if member does not request hearing.

Procedure: CM immediately notifies BoSS. BoSS sends notification of discontinuation of services and fair hearing rights to member. BoSS ensures that CMA, HMA, and BMS are notified as appropriate.

- 11) Another reason listed for discontinuation of services is:

Reason: **Member Noncompliance with Program.

Effective Date: 13 days after the date of the notification letter, if member does not request hearing.

Procedure: CMA or HMA 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 CMA, HMA and BMS are notified as appropriate.

** The member is persistently non compliant with the POC.

VIII. CONCLUSIONS OF LAW:

- 1) The letter addressing case closure states specifically that the case is being discontinued due to client request. The claimant requested a hearing timely and benefits have continued. The letter does not address the claimant's compliance when having the medical reevaluation done.
- 2) Although the claimant was frustrated with the system, he has changed his mind and does not want his case closed. Testimony on behalf of the claimant revealed that he had stated he wanted his case closed but later stated he would let WVMi come if he knew the time.
- 3) The closure of the case is not valid.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, it is the finding of the State Hearing Officer that the Department is reversed in the decision to terminate the claimant's ADW case due to the fact he requested case closure. The claimant has changed his mind and benefits have continued. The action described in the notification letter dated September 1, 2006 will not be taken. The claimant must cooperate with the next medical reevaluation. He cannot dictate an exact time for the WVMi nurse to come.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 15th Day of December, 2006.

**Margaret M. Mann
State Hearing Officer**