



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1736
Romney, WV 26757

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

August 21, 2007

Dear Ms. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 2, 2007. Your hearing request was based on the Department of Health and Human Resources' decision to terminate your benefits under the Aged/Disabled (HCB) Title XIX Waiver Services Program due to unsafe physical environment.

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. These regulations specify that Aged/Disabled Waiver Program services can be discontinued as a result of an unsafe physical environment in the household. 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 placed in jeopardy or if there is a deteriorating condition and potential for injury. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual Section 590.3)

Information and testimony submitted at your hearing did provide sufficient evidence to reveal that an unsafe physical environment exists in your household which would place staff and your welfare in jeopardy.

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

Sincerely,

Sharon k. Yoho
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
Linda Wright, BoSS
[REDACTED] CWWAS
Brenda Beer, DHHR

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

_____,

Claimant,

v.

Action Number: 07-BOR-1421

**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 August 2, 2007 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 500 of the West Virginia Department of Health and Human Resources. This fair hearing was originally scheduled for July 18, 2007. It was rescheduled and convened on August 2, 2007 on a timely appeal filed May 17, 2007.

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

Brenda Beer, Adult Protective Service Worker, DHHR

Linda Wright, Bureau of Senior Services (BoSS) by speakerphone

_____, Case Manager, Central WV Aging Services, CWVAS

_____, Homemaker RN, CWVAS

_____, Homemaker

Presiding at the hearing was Sharon K. Yoho, 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 was correct in its decision to terminate the Claimant's services under the Aged/Disabled Waiver (HCB) Program due to an unsafe physical environment.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community-Based Services Manual Sections 504.4

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Home and Community-Based Services Manual Section 504.4
- D-2 CWVAS memorandum to Bureau of Senior Services, BoSS, dated May 4, 2007
- D-3 Notification of discontinuance of services dated May 8, 2007
- D-4 CWAS Client Progress Notes, March 20, 2007 thru April 19, 2007
- D-5 CWAS Service Recording Lognotes, March 9, 2007 thru March 27, 2007
- D-6 Hand written note from homemaker, _____ dated May 4, 2007
- D-7 Hand written note from homemaker _____ dated May 4, 2007
- D-8 Notice to Ms. _____ of CWAS decision to close, dated April 18, 2007
- D-9 Memo to BoSS of request to transfer case from CWAS dated April 18, 2007
- D-10 Memo from Boggess BoSS to Wright BoSS dated April 18, 2007
- D-11 Member request to transfer to another CM Agency dated April 26, 2007

Claimant's Exhibits:

- C-1 Adult Protective Services, APS, Reporting Form, dated March 27, 2007
- C-2 Notes attached to APS reporting form.

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving Aged & Disabled Waiver services, hereinafter ADW benefits in May 2007 in Preston County when the staff of case management agency, Central WV Aging Services (CWVAS) began experiencing problems with providing services. On March 27, 2007, the claimant's case manager made an Adult Protective Services referral to the Department. They reported these concerns to the Bureau of Senior Services (BoSS). On April 18, 2007, CWVAS issued a notice to the claimant of the decision to close the homemaker and case management services in which they had been providing. A transfer form was included with this notice. The claimant signed and mailed this transfer form to the Bureau of Senior Services (BoSS). On May 8, 2007, BoSS issued a letter to the claimant advising that services under the Medicaid Aged and Disabled Waiver program was being discontinued due to unsafe physical environment.
- 2) The Claimant is a 92-year-old woman with a diagnosis of Alzheimer's in conjunction with multi infarct dementia due to CIAs (strokes). The staff of CWVAS who has worked with her for five years has recently noticed a significant decline mentally and physically in her condition.
- 3) The Claimant possesses a permit to carry a concealed weapon and insists on doing so. She keeps a loaded handgun in her apartment and carries it in her purse on occasion when she goes out. She stated that she usually keeps it under her pillow. On a recent occasion, her homemaker carried her purse for her throughout the day while running errands. When they stopped at one location, the gun fell out of her purse. This is when the homemaker became aware that the loaded gun was in the purse. The claimant made it clear during testimony that she did not wish to discontinue this practice of maintaining a loaded handgun. She stated, "What good is a gun if you can't use it." She later stated, "I don't know how to operate a loaded gun. I think really that there is very few nights that my door is not opened 3 or 4 times and left open." The claimant purchased the gun years ago when she ran a beer joint alone. When asked why she felt she needed it now, she stated: "Appearance (then laughed), basically there is a 3 yr. old, 2 yr. old & 7yr. old involved. They were all made an issue right from the beginning, Alzheimer's you put your hand down that's it."
- 4) The claimant moved from a house in Fairmont recently to a small apartment in Kingwood. She moved more items than this apartment could accommodate. She admittedly is a hoarder. She did not want to part with anything and highly objected to the homemaker's attempts to organize her things to clear an adequate pathway to the apartment exit. The claimant would pull things back out onto the floor area as soon as the homemakers were done arranging an area. When entering her apartment one must turn sideways to get through the apartment. The staff of CWVAS had concerns for the claimant's ability to evacuate in the event of a fire. The claimant ambulates very slowly with much difficulty.
- 5) Much of the claimant's testimony was inappropriate. She referred to her grown nephew as being 3 yrs. old. Her nephew had been Power of Attorney and she recently reversed that. Regarding her nephew, she stated, "If he thought I should be there, he pushed the buttons. I would say, [REDACTED] this should be private, this is really no place for a child

of 3 yrs. old.” The hearing officer stated, “[REDACTED] is not 3 years old, who is 3 years old?” She replied, “He is three.”

- 6) When asked if she would like the homemakers to come back to her home, she stated, “I enjoyed them.” When asked why she did not want them to help straighten things up, she stated, “Well let me put it this way, when they bring 3 yr. old children in to do a days work and they are given free arm there’s not much you can do.” When asked if they sent 3 year olds in to straighten, she stated, “One 3 one 5 and one 7 they were given free reign.”
- 7) The Adult Protective Services (APS) worker testified on behalf of the claimant. The APS worker voiced her concerns regarding the claimant’s homemaker services being stopped and the danger that this puts the claimant in. The claimant has been determined to be medically eligible for the maximum homemaker hours so clearly needs the service. The APS worker reported that a doctor in Charles Town did not declare the claimant incompetent so she therefore; determined there was no indication that a mental hygiene hearing was in order. The APS worker indicated that she had spent much time with the claimant and she felt she was alert, oriented, and able to make her own decisions. The APS worker testified that the claimant has a permit for her gun and that she has a right to bear arms. She had talked to the claimant about maybe having someone take care of the gun for her but the claimant did not want to do that. The APS worker did not have information regarding a diagnosis of Alzheimer’s when she was processing the APS referral. She was aware of a diagnosis of dementia and testified of her understanding that there is a difference between the two diagnoses.
- 8) Aged/Disabled Home and Community-Based Services Manual Section 590.4 (D-1) states, in part:

The following are reasons for discontinuation of client’s ADW services.

*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. This may include, but is not limited to, the following circumstances:

- A. The member, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals.
- B. The member, his informals, household members, or others display an abusive use of alcohol and/or drugs.

- C. In cases of danger to staff, services may be discontinued immediately.

Deteriorating Condition and Potential for Injury: A provider is unable to meet the needs of a member whose deteriorating condition, without an informal support system in place, results in physical injury or the potential for injury. Provider may request that member choose another provider agency, if that agency is able to fulfill the needs of member.

VIII. CONCLUSIONS OF LAW:

1. Testimony and evidence strongly indicates that this claimant's mental status is not stable enough to ensure her own safety or the safety of visitors while she is in the possession of a loaded handgun. Her diagnosis of Alzheimer's in conjunction with multi infarct dementia due to CIAs speaks to this conclusion.
2. Aged/Disabled Home and Community-Based Services Manual Section 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. While this claimant has not specifically threatened staff with her loaded gun, she did have her homemaker carry her purse around one day without advising the homemaker that there was a loaded gun in her purse. The fact that the gun was able to fall out of the purse supports that this situation was a volatile one and the homemaker's safety was threatened.
3. Aged/Disabled Home and Community-Based Services Manual Section 590.3 provides that an unsafe environment exists when the provider is unable to meet the needs of a member whose deteriorating condition, results in the potential for injury. Both the loaded gun and the cluttered apartment's lack of a clear path for exiting constitute an unsafe environment. The claimant's refusal to remedy either situation renders the provider agency unable to meet the needs of this claimant.
4. The APS referral clearly was an attempt by the homemaker agency to obtain, for this claimant, appropriate intervention to ensure that she is safe and receives the level of care that she needs. The ADW program purpose provides that 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). When care in the home proves to not be sufficient, nursing facility care needs to be considered.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the Agency's decision to terminate the Claimant's benefits 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 21st Day of August 2007.

**Sharon K. Yoho
State Hearing Officer**