



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

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

July 31, 2007

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 11, 2007. Your hearing request was based on the Department of Health and Human Resources' discontinue services under the Aged Disabled Waiver, A/DW, program due to no services provided for 100 days.

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 Aged/Disabled (HCB) Title XIX Waiver Services Program is granted to those individuals who meet all eligibility requirements. One of these requirements is that the individual must not have a period where he or she is not provided services for 100 continuous days.

The information, which was submitted at your hearing, revealed that your case was in appeal status for 79 of the days when services were not being provided and these 79 days cannot be considered in the calculation of 100 days. The Department then failed to implement a hearing decision dated March 9, 2007, which caused you to continue to go without eligible services under the Aged/Disabled Waiver program.

It is the decision of the State Hearings Officer to reverse the action of the Department to discontinue the services you are eligible to receive under the A/DW program due to no services provided in 100 continuous days.

Sincerely,

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

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

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

_____,
Claimant,

v.

Action Number: 07-BOR-1455

**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 July 11, 2007 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 July 11, 2007 on a timely appeal, filed May 9, 2007.

It should be noted here that the claimant's benefits have not been continued pending this hearing decision nor during a previous 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's Witnesses:

Department's Witnesses:

Linda Wright, Bureau of Senior Services by phone

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 their decision to discontinue services under the Aged/Disabled Waiver (HCB) program.

V. APPLICABLE POLICY:

Aged/Disabled Home and Community Based Services Manual 504 & 507.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Aged/Disabled Waiver Policy §504
- D-2 Letter to Bureau of Senior Services (BoSS) from Potomac Highlands Support Services (PHSS) of relinquishing services dated April 4, 2007
- D-3 Claimant's request for transfer to WV Choice case management dated April 11, 2007
- D-4 Memo from PHSS to BoSS of no services provided for 100 days
- D-5 Notice from BoSS to claimant of discontinuance due to no services in 100 days.
- D-6 Notice of medical eligibility for 93 hrs. homemaker services dated January 15, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant was an active recipient of the Aged/Disabled Waiver program in November 2006 when her homemaker ceased to show up to provide services. The claimant attempted to deal with a problem that had surfaced between her and her homemaker by contacting both her homemaker agency Panhandle Support and her Case Management Agency, PHSS. She testified that her phone calls were not returned from either agency.
- 2) PHSS and Panhandle Support contacted the homemaker and made a determination from their contacts with her that the environment in the claimant's home was unsafe. This prompted the Department to discontinue services in November 2006.

- 3) The claimant requested a hearing regarding the discontinuance on December 20, 2006. The hearing was held and the hearing officer issued a decision on March 9, 2007 to reverse the action of the Department. The home was not proven an unsafe environment for a homemaker.
- 4) The outcome of the above hearing prompted PHSS on April 4, 2007 to notify BoSS that due to the hearing decision they were relinquishing services to the claimant.
- 5) On April 11, 2007, the claimant completed a transfer request form in an attempt to be transferred to WV Choice for case management. On April 19, 2007, the Department was advised by PHSS that the claimant had not had services in excess of 100 days. The Department decided to not process the transfer request and instead to process case closure due to no services provided for 100 continuous days.
- 6) The Department issued a delayed notice on May 4, 2007 to the claimant advising, "The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued because no services have been provided for 100 days". This action prompted a request for this hearing.
- 7) The claimant had a Pre Admission Screening review completed in January 2007 and was notified on January 15, 2007 that she remained medically eligible for 93 hours of homemaker services per month.
- 8) The time period that the claimant was without services prior to her December 20, 2006 hearing request was 44 days. The period of time, while in appeal status pending a hearing decision between December 20, 2006 and March 9, 2007, was 79 days. The period of time between the March 9, 2007 decision and the April 19, 2007 date when the Department decided to not process the transfer was 41 days.
- 9) Aged/Disabled Home and Community Based Services Manual §504.4 – Discontinuation of Services:

The following are reasons for discontinuation of a client's ADW services:

No services have been provided for 100 continuous days; for example, extended placement in long-term care or rehabilitation facility.

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

Procedure: CMA or HMA 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.

- 10) Aged/Disabled Home and Community Based Service Manual §507.1.1

Case Management:

D. The Case Manager proactively identifies problems and coordinates services that provide appropriate high quality care to meet the individualized and often complex needs of the member.

The Case Manager is responsible for follow-up with the member to ensure that services are being provided as described in the SCP. A monthly telephone contact and a six-month face-to-face contact with the member are required to identify any new problems, and to evaluate outcomes of current problems noted on the SCP.

VIII. CONCLUSIONS OF LAW:

- 1) The Aged Disabled Waiver policy 504.4 provides that once a participant of the A/DW program has not been provided services for 100 continuous days, they must be terminated from the program.
- 2) The period of time when this case was in appeal status pending a decision, cannot be included in the computation of the 100 days. The claimant was without services only 44 continuous days prior to requesting a hearing on December 20, 2006. The 79 days that followed was a period pending a hearing decision. The next 41 days was a period during which the Department failed to implement the hearing decision issued March 9, 2007. On April 19, 2007, when the Department decided not to process the transfer request, the total number of days, which the Department should have considered as days when services were not provided, is only 85 days.
- 3) It was determined during a Pre-Admission Screening process in January 2007 that the claimant remained medically eligible for 93 hours of homemaker services. The Department is obligated to transfer her case to another Case Management Agency and to work with that Case Management Agency in restoring homemaker services to this claimant. The Case Manager is obligated by Policy 507.1 to closely monitor the case to proactively identify problems and coordinate services.

IX. DECISION:

After reviewing the information presented during this hearing and the applicable policy and regulations, I am ruling that the claimant should not be terminated from the A/DW program. My ruling is to **reverse** the Department's actions to discontinue the benefits and services under the Aged/Disabled Title XIX (HCB) Waiver program and further rule that the Department take a proactive role in restoring properly monitored homemaker services through a new Case Management agency to this claimant.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 31st Day of July 2007.

Sharon K. Yoho
State Hearing Officer