



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P. O. Box 2590
Fairmont, WV 26555

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

October 1, 2007



Dear Mr. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held August 29, 2007. Your request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services under the Aged/Disabled Home and Community Based Services Waiver (ADW) Program because no services have been provided for one hundred (100) continuous 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 Aged/Disabled Home and Community Based Services Waiver (ADW) Program is based on current policy and regulations. Some of these regulations state as follows: One of the reasons for discontinuation of a client's ADW benefits is that no services have been provided for one hundred (100) continuous days, for example, extended placement in long-term care or rehabilitation facility. (Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective October 1, 2006)

The information which submitted at your hearing revealed that no ADW services were provided for one hundred (100) continuous days.

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

Sincerely,

Raymond Keener, III
State Hearing Officer
Member, State Board of Review
cc: Erika Young, Chairman, Board of Review
BoSS
WVMI

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

██████████
Claimant,

Action Number: 07-BOR-1696

v.

**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 29, 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 August 29, 2007 on a timely appeal filed July 8, 2007.

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

II. PROGRAM PURPOSE:

The program entitled Aged/Disabled Home and Community-Based Services Waiver (ADW) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources (hereinafter "Agency").

The Aged/Disabled Home and Community-Based Services Waiver (ADW) Program is defined as a long-term care alternative which enables the individual to remain at or return home rather than receiving nursing facility (NF) care. The program provides eligible individuals with a range of services comparable to those services provided in a nursing facility. Specifically, ADW program services include assistance with personal hygiene, nutritional services which include food preparation and feeding, arrangement for medical and nursing care, medication administration, and environmental maintenance necessary for clients to remain in their homes.

III. PARTICIPANTS:

██████ Claimant
Kay Ikerd, Registered Nurse, Bureau of Senior Services

Presiding at the hearing was Raymond Keener, III, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether the Claimant continues to meet the requirements needed to receive ADW services.

V. APPLICABLE POLICY:

Sections 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective October 1, 2006

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective October 1, 2006
- D-2 Letter dated June 1, 2007 from ████████ of ████████
████████████████████
- D-3 Notice of Denial dated June 18, 2007
- D-4 Claimant's Request for Hearing dated July 3, 2007 and filed/received July 8, 2007

VII. FINDINGS OF FACT:

- 1) The Claimant is a recipient of ADW services.
- 2) Documents as noted in Section VI above were accepted.
- 3) Testimony was heard from the participants listed in Section III above. All persons providing testimony were placed under oath.
- 4) A notice was sent to BoSS from the case manager, Ms. ████████, of ████████
████████████████████, on June 1, 2007. The notice informed BoSS that Claimant had gone one hundred (100) consecutive days without services due to being in jail and having an expired PAS. (Exhibit D-2).

- 5) Testimony was heard from Department representative, Kay Ikerd, which revealed that the last day of recorded service was February 20, 2007. The one hundred (100) days would have expired on May 31, 2007 according to Ms. Ikerd.
- 6) Testimony was heard from the Claimant. Claimant was unable to provide any evidence to refute or otherwise contradict the testimony offered by Ms. Ikerd.
- 7) Section 504.4 of the Medicaid Aged & Disabled Waiver Program Policies & Procedures Manual effective October 1, 2006 reads in part that notice for discontinuation of a member's services must be sent to BoSS. Notice must contain the following information: date, agency name and address, name and title of person sending notice, name and address of member and/or Power of Attorney, reason for closure, and last date of service. The following are reasons for discontinuation of a member's ADW's services. Reason: No services have been provided for 100 continuous days; for example, extended placement in long-term care or rehabilitation facility. The action is taken 13 days after the date of the notification letter, if member does not request hearing.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that one of the reasons for discontinuation of a client's ADW services is: No services have been provided for one hundred (100) **continuous days**.
- 2) The Claimant's last recorded date of service was February 20, 2007. The one hundred (100) days would have expired on May 31, 2007.
- 3) No ADW services were provided to the Claimant for one hundred (100) continuous days.
- 4) The proposed termination of the case is valid.

IX. DECISION:

Based on evidence and testimony provided and presented during the hearing, the State Hearing Officer has determined that the Department followed appropriate policy and procedures in making the determination that the Claimant no longer meets the criteria for the ADW Program as he did not receive services for one hundred (100) continuous days. Therefore, it is the State Hearing Officer's decision to uphold the Department's proposal to terminate the Claimant's ADW case as described in the notification letter dated June 18, 2007.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-46

ENTERED this 1st day of October, 2007.

**Raymond Keener, III
State Hearing Officer**