



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

March 9, 2007

Dear Ms. [REDACTED]

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 16, 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. (Aged/Disabled Home and Community-Based Services Waiver Policy and Procedures Manual Section 590.3)

Information and testimony submitted at your hearing did not provide sufficient evidence to reveal that an unsafe physical environment exists in your household which would place staff's welfare in jeopardy.

It is the decision of the State Hearing Officer to **reverse** 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
Boggess, BoSS
[REDACTED]

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

,

 **Claimant,**

v.

Action Number: 06-BOR-3438

**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 February 16, 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 convened on February 16, 2007 on a timely appeal filed December 20, 2006.

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:

All presented by speakerphone

claimant

Linda Wright, Bureau of Senior Services (BoSS)

██████████, Case Manager,

manager

, 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 | Notification of discontinuance of services dated November 30, 2006 |
| D-3 | Memo from [REDACTED] to BoSS dated November 13, 2006 |
| D-4 | Memo from [REDACTED] to BoSS dated November 16, 2006 |
| D-5 | Letter from [REDACTED] to grievant dated November 16, 2006 |
| D-6 | [REDACTED] recording log November 7, 2006 thru November 13, 2006 |
| D-7 | Written statement from Homemaker dated November 7, 2006 |
| D-8 | Hearing request dated December 2, 2006 |

VII. FINDINGS OF FACT:

- 1) The Claimant was receiving Aged & Disabled Waiver, hereinafter ADW, benefits in November, 2006 in [REDACTED] County when her homemaker of two months reported problems with the claimant.
- 2) On November 6, 2006, the homemaker called the [REDACTED] manager to report that the claimant refused to allow her to help with some of the items listed on the care plan, but wanted the sheets marked on daily to show that she was helping with these

- items. She also reported that the claimant was making her split her pay check with her since she was not doing all of the things on the sheet. She then reported that the claimant was also selling pills.
- 3) Later in the afternoon of November 6, 2006 the claimant contacted the [REDACTED] manager and advised her that she had found someone else who would work for her. The manager stalled her by stating that this new person would have to be hired and trained. The problems reported by the homemaker were not discussed with the claimant at this time.
 - 4) The homemaker wrote a statement regarding the accusations she had verbally reported and provided it to [REDACTED]. She also told [REDACTED] that she had reported the drug information to law-enforcement. The contents of the statement were discussed among staff at [REDACTED] and the case manager of [REDACTED]. The contents of a telephone message left by the claimant on the homemaker's phone were also discussed among these people.
 - 5) On November 9, 2006 the [REDACTED] case manager contacted the Bureau of Senior Services to advise the director of the allegations. The director agreed with the staff of [REDACTED] and [REDACTED] that the case needed to be closed due to unsafe environment conditions in the home. He reported to [REDACTED] that he felt the telephone message was intimidating.
 - 6) On November 13, 2006 the case manager contacted law-enforcement and talked with the investigating officer who would not disclose any information. When she asked him if he felt the situation in the home was unsafe, he told her that the worker would have to be the one to determine this, but acknowledged that any situation can become hostile.
 - 7) On November 30, 2006 the Bureau of Senior Services issued a notice of closure to the claimant due to unsafe environment.
 - 8) Neither the staff of [REDACTED] nor the staff of [REDACTED] contacted the claimant to obtain information from her regarding the allegations made by the homemaker prior to the closing of the case. The claimant requested a hearing after receiving the closure letter.
 - 9) The homemaker's written statement, Exhibit D-7, explains that she was doing strenuous activities for the claimant more than the personal care items. She stated that the claimant was requiring her to split her pay check with her since she wasn't doing the things on the sheet. She reports on her statement that she got the claimant a cell phone and put it on her own bill so the claimant could have long distance services. She stated that the \$20. it cost her was suppose to be paid to her by the claimant, but she never paid her. She then explained in her statement that the claimant was selling pills and even wanted the homemaker's pills to sell. The homemaker reported that she told her that she could not give her any pills, as she had to share her pills with her husband since they could not both go to the doctor. She reported that the claimant got mad about this.

- 10) The telephone message that was played during this hearing had the following content:
“First, I am not afraid of [REDACTED] I have no problem with [REDACTED] Second [REDACTED] does not have a truck, he has a car. He and his girlfriend came over here to buy weed, which I don’t have, so I called [REDACTED] [REDACTED] came down for those reasons. You told me you were waiting for [REDACTED] to do it. If [REDACTED] won’t help you with it, it’s not my fault. If you want to be done that is fine with me. You owe me for the three pills \$30.00 and \$29.67 and you can get [REDACTED] \$20.00 and that is a total of \$79.67. If you want to be done that is fine with me.”
- 11) The claimant’s homemaker had developed a non-professional relationship with the claimant either prior to becoming her homemaker or after being hired to be the homemaker. The homemaker had stuff stored somewhere and was attempting to find someone with a truck to move the stuff for her. The phone message indicates that the homemaker was upset with the claimant because she thought someone with a truck had come by and the claimant did not have them move the stored items for her. The phone message also indicates that the homemaker had been receiving prescription pills from the claimant in exchange for cash and had failed to pay for three pills. The homemaker testified that the home is also unsafe due to boards being missing from the wheelchair ramp entering the home.
- 12) The phone message also indicates that the claimant may have, in the past sold marijuana but at that time, she did not have any to sell. The claimant explained in her testimony that the three pills referred to three bottles of Tylenol that the homemaker had asked her to pick up for her. She explained that the weed comment referred to a large houseplant that she had that was about dead but these other people wanted it.
- 13) The homemaker often brought her husband with her to the claimant’s home and she and her husband spent the night at the claimant’s home for seven nights at one point. The homemaker’s explanation of the overnight stays was that she felt the claimant needed protection from her grown children. The claimant stated that the homemaker did not get along with her daughter and that she did not need protection from her children.
- 14) 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 client, his informals, household members, or others repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and threaten a homemaker or other agency staff with guns,

knives, or other potentially dangerous weapons, including threatening animals.

- B. The clients, his informals, household members, or others display an abusive use of alcohol and/or drugs that results in the above.
- C. In cases of danger to staff, services may be discontinued immediately.

VIII. CONCLUSIONS OF LAW:

1. Testimony and evidence strongly indicates that there could have possibly been some illegal drug activity going on at the claimant's home and that the homemaker and claimant were both involved in this activity. Testimony regarding the weed comment being about a houseplant and the three pills referring to bottles of Tylenol was not credible testimony. However, this accusation of drug activity will be left up to law-enforcement to determine.
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. Policy further provides that the abusive use of alcohol and/or drugs could constitute a finding of unsafe environment **if** (emphasis added) it results in the homemaker and/or other agency staff being threatened or abused and the staff's welfare is in jeopardy. Evidence and testimony did not support the allegation that the homemaker's welfare was in jeopardy or that she was being threatened. Testimony regarding the homemaker spending seven nights at the claimant's home dispels any belief that the homemaker felt threatened at the claimant's home.
3. Testimony and evidence support that the claimant, the homemaker and the community support agencies allowed for an unhealthy, non-professional relationship to grow to the point of the claimant and homemaker developing hostility toward one and other.
4. The information gathered at this hearing indicates that a more acceptable approach to remedying the situation which was presented to the community support agencies would have been to first discuss the problems with both the claimant and the homemaker and then to find another client for the homemaker and to find another homemaker for the claimant. Both the claimant and the homemaker should have been reminded of the appropriate professional relationship that is expected for this program and the consequences of not maintaining such a relationship.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** 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 9th Day of March, 2007.

Sharon K. Yoho
State Hearing Officer