



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
9083 Middletown Mall  
White Hall, WV 26554

Earl Ray Tomblin  
Governor

Rocco S. Fucillo  
Cabinet Secretary

October 10, 2012

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Dear Mr. ----:

Attached is a copy of the Findings of Fact and Conclusions of Law for your hearing held on October 3, 2012. Your hearing request was based on the Department of Health and Human Resources' proposal to terminate your benefits and services through the Medicaid Aged/Disabled (HCB) Title XIX Waiver Services Program due to non-compliance.

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.

Continued eligibility for the Aged/Disabled Waiver Program is based on current policy and regulations. Some of these regulations state that services may be discontinued when the member is persistently non-compliant with the Plan of Care. [West Virginia Bureau for Medical Services Provider Manual §501.17 - Aged/Disabled Waiver Services - Discontinuation of Services]

Information submitted at the hearing fails to demonstrate that you have been persistently non-compliant with your Plan of Care or that your service provider submitted a Request for Discontinuation Form.

It is the decision of the State Hearing Officer to **reverse** the Department's proposal to discontinue your benefits and services provided through the Medicaid Aged/Disabled Waiver Services Program.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Chairman, Board of Review  
BoSS

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

----,

**Claimant,**

**v.**

**Action Number: 12-BOR-1916**

**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 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 convened on October 3, 2012, on a timely appeal filed July 25, 2012.

**II. PROGRAM PURPOSE:**

The ADW Program is defined as a long-term care alternative that provides services that enable an individual to remain at or return home rather than receiving nursing facility (NF) care. Specifically, ADW services include Homemaker, Case Management, Consumer-Directed Case Management, Medical Adult Day Care, Transportation, and RN Assessment and Review.

**III. PARTICIPANTS:**

----, Claimant

Kay Ikerd, RN, BoSS – Department's representative (participated telephonically)

----, Case Manager RN, ----- Department's witness (participated telephonically)

----, RN, ----- Department's witness (participated telephonically)

Presiding at the hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTION TO BE DECIDED:**

The question to be decided is whether or not the Department was correct in its action to terminate the Claimant's benefits and services provided through the Medicaid Aged/Disabled Home and Community-Based Waiver Services Program.

**V. APPLICABLE POLICY:**

Medicaid Aged/Disabled Home and Community-Based Waiver Services Manual, Chapter 500, Section 501

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Department's Exhibits:**

- D-1 Aged/Disabled Home and Community-Based Waiver Services Manual Section 501.17
- D-2 Request for transfer due to compliance issues, dated 7/13/12, and supporting documentation (16 pages)
- D-3 Request for Discontinuation of Service dated 7/16/12
- D-4 Notice of termination dated 7/17/12

**Claimant's Exhibits:**

- C-1 Personal Assistance/Homemaker Worksheets for the period of 5/20/12 – 5/26/12, 5/27/12 – 5/31/12, and 6/1/12 – 6/2/12

**VII. FINDINGS OF FACT:**

- 1) On or about July 17, 2012, Claimant was notified that his benefits and services provided through the Medicaid Aged and Disabled Waiver Program (ADW Program) were being discontinued due to noncompliance effective July 2012.
- 2) Respondent's representative, Kay Ikerd, a Registered Nurse (RN) employed by the Bureau of Senior Services (BoSS), cited policy found in the West Virginia Department of Health and Human Resources (WVDHHR) Bureau for Medical Services Provider Manual §501.17, which provides for the discontinuation of Medicaid ADW Program benefits when a member is non-compliant with the plan of care.
- 3) Respondent introduced Exhibit D-2, a request for transfer from Claimant's service provider - --, LLC, hereinafter ----, dated July 13, 2012 - accompanied by supporting documentation. Respondent's witnesses, ----, RN, and ----, RN, both employed by ----, proffered testimony to indicate that the Claimant calls their office and yells at office staff on a daily basis. Because he has screamed at caregivers, several have refused to go back into his home due to fear, and one caregiver reportedly quit employment with ----. RN ---- testified that on June 6, 2012, Claimant requested that ---- transport him to ----, WV, to meet a woman he met online (see D-2, page 8). RN ---- purported that when she advised Claimant that ---- could not transport him for a personal, non-medical reason, Claimant became belligerent and stated - "You people are supposed to take me wherever I want to go." On June 7, 2012, Claimant requested a transfer of service provider to ----. On June 29, 2012, Claimant phoned ---- and "berated" RN ---- (see D-2, page 4) because his caregiver did not have her original Cardiopulmonary Resuscitation

(CPR) card on her person. The Claimant alleged that the law requires the individual to carry his/her CPR card, and ---- has put his life in danger. RN ---- testified that all of their caregivers are required to maintain CPR certification, but that their original CPR card is kept on file at the office. ---- was subsequently served with a subpoena, indicating the Claimant was suing them for \$5,000 for jeopardizing his life. It was noted, however, that Claimant failed to appear for the scheduled hearing. RN ---- and RN ---- testified that the Claimant continually calls and complains about poor service and has refused to sign personal assistance/homemaker worksheets (C-1) that are required for Medicaid billing/reimbursement. As a result, ---- filed a request for transfer due to compliance issues.

While it is noted that Respondent included documentation in Exhibit D-2 to indicate the Claimant's financial and/or medical eligibility may be in question, that evidence is not relevant to the current matter under appeal. It should also be noted that the Claimant's Plan of Care was not submitted into evidence.

- 4) The Claimant acknowledged that he confronted ---- about his caregiver not having his/her CPR card available because he was told that the law requires it. The Claimant denied that he requested to be transported to ----, WV, to see a woman he met online. The Claimant contended that he wanted to visit his sister. The Claimant indicated that he has missed several appointments at the ----in [REDACTED] WV, because there was no caregiver available to provide him transportation, yet no one is accountable. He contends that he refused to sign the Personal Assistance/Homemaker Worksheets (Exhibit C-1) because they were blank, or incomplete, and he was concerned that ---- would bill for services that it had not provided.
- 5) The West Virginia Department of Health and Human Services, Bureau for Medical Services Provider Manual §501.17 (DISCONTINUATION OF SERVICES), states as follows:

The following require a Request for Discontinuation of Services Form be submitted and approved [sic] BoSS:

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

B. Unsafe Environment – an unsafe environment is one in which the personal assistance/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:

- 1) The member or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a personal assistance/homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals.

- 2) The member or other household members display an abusive use of alcohol and/or drugs.

Note: When BoSS receives an unsafe closure request, they will attempt to process the request as a transfer. To do so, BoSS will require the member (or legal representative) to sign Consent for Release of Information Form. This will permit all information regarding the unsafe circumstances to be disclosed to other agencies and APS Healthcare/IRG. If another agency is not willing to accept the member due to unsafe circumstances, the case will be closed.

C. The member is persistently non-compliant with the Plan of Care.

D. Member no longer desires services.

The Request for Discontinuation of Services Form must be submitted to BoSS. BoSS will review all requests for a discontinuation of services. If it is an appropriate request, and BoSS approves the discontinuation, BoSS will send notification of discontinuation of services to the member (or legal representative) with a copy to the Case Management Agency or F/EA. Fair hearing rights will also be provided except if the member (or legal representative) no longer desires services. The effective date for the discontinuation of services is 13 calendar days after the date of the BoSS notification letter, if the member (or legal representative) does not request a hearing. If it is an unsafe environment services may be discontinued immediately.

All discontinuation of services (closures) must be reported on the Case Management Monthly Report to BoSS.

The following do not require a Request for Discontinuation of Services Form but must be reported on the Case Management Monthly Report:

- A. Death
- B. Moved Out of State
- C. Medically Ineligible
- D. Financially Ineligible

## **VIII. CONCLUSIONS OF LAW:**

- 1) Medicaid policy stipulates that a member's ADW Program benefits will be discontinued if the member is persistently non-compliant with the Plan of Care. Policy notes, however, that a Request for Discontinuation Form must be submitted and approved by BoSS.
  
- 2) The facts of this case reveal that the Claimant expressed dissatisfaction with his ADW Program service provider and requested his case be transferred to ----. Claimant's service

provider recognized that it was unable to provide satisfactory services to the Claimant, and subsequently requested that his case be “transferred” due to compliance issues.

- 3) Because the Claimant’s Plan of Care was not submitted into evidence, it is unclear whether or not he was non-compliant. Furthermore, there is no evidence to indicate the Claimant’s service provider submitted a Request for Discontinuation Form pursuant to the regulatory requirements.
- 4) Based on the evidence, Respondent’s action to discontinue Claimant’s Medicaid ADW Program services is not supported by policy.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the action of the Department to discontinue the Claimant’s benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant’s Recourse to Hearing Decision  
Form IG-BR-29

**ENTERED this \_\_\_\_ Day of October 2012.**

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**Thomas E. Arnett  
State Hearing Officer  
Member, Board of Review**