



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 9, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2421

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Claimant's Recourse to Hearing Decision
Form IG-BR-29

cc: Tammy Grueser, BoSS
CWVAS

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2421

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on September 7, 2016, on an appeal filed July 22, 2016.

The matter before the Hearing Officer arises from the July 12, 2016 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance and an unsafe environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Teresa Connor, Case Manager, Central West Virginia Aging Services. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged & Disabled Waiver Services Manual Policy Section 501.34
- D-2 Aged & Disabled Waiver Request for Discontinuation of Service dated July 12, 2016
- D-3 Discontinuation notices dated July 12, 2016
- D-4 West Virginia Incident Management System form
- D-5 Electronic mail transmission between Cecilia Brown and Tamra Grueser dated July 12, 2016

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) On July 12, 2016, the Respondent issued notice (D-3) to the Appellant, informing him of its proposal to discontinue services under the Aged/Disabled Waiver Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) Tammy Grueser, Registered Nurse with the Bureau of Senior Services (BoSS), testified that the Appellant's services were discontinued because of the Appellant's alleged threats and hostile actions. Ms. Grueser stated that the Appellant had guns in his home, was allegedly arrested for gun violence in the past, and caused his case management agency to fear for its workers' safety.
- 3) ██████████ Case Manager with Central West Virginia Aging Services (CWVAS), testified concerning information in Exhibits D-4 and D-5, indicating that the Appellant called the agency on July 7, 2016 and stated that he did not want the ██████████ staff back in his home because "they have ruined his life." She explained that the Appellant was upset because his care provider was being transferred from his home to a placement that was closer to her residence. He allegedly stated that he was drinking whiskey again, and "may just off himself," indicating that he could turn on his stove's pilot light or "fly my Volvo." Ms. ██████████ testified that the agency contacted Adult Protective Services, who advised her to first call 911 concerning the threats. The Appellant then called the agency back and told a registered nurse that he was upset about the police being called and that he was not going to harm himself. He proceeded to say, however, that he did not like the police and that they might get "blown away if they come back."

The agency contacted the Appellant's daughter, who indicated that she believed the Appellant would shoot her if she went to his home. She alleged that the Appellant was criminally charged three years ago and served jail time for gun violence threats toward his family. A judge released the Appellant from prison on the condition that his son remove firearms from the home. The Appellant allegedly accused his son of theft, but continued to brag that he had a handgun in the pocket on the back of his recliner (which was confirmed by his care providers). The Appellant's daughter indicated that she believed the agency's employees were at risk, and advised that the agency should not send care providers to his home.

- 4) The Appellant testified that he is 78 years old, has difficulty breathing, and was under the influence of codeine when the incident occurred. He stated that he is no longer taking the pain medication and that he would not "blow up now" at anyone. The Appellant contended that his family was being untruthful, that he has no weapons in the house, and that he does not drink alcoholic beverages. The Appellant testified that he is lonely and in pain, and that he needs assistance with several activities of daily living.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that services can be discontinued when a member's home environment is one in which a personal attendant 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 verbal abuse by the member or household members, and the abusive use of alcohol and/or drugs. Discontinuation can also be proposed when an individual is non-compliant with a Service Plan.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be discontinued when an individual is non-compliant with the program and provides an unsafe or threatening environment for care providers working in the home. Information provided by the Department reveals that the Appellant allegedly threatened suicide, and has threatened gun violence toward law enforcement. His daughter reported that he had previously been incarcerated for gun violence threats toward his family, and the Appellant told his Case Manager that he did not want members of the agency's [REDACTED] staff back in his home. The Appellant's daughter further reported that the behavior was chronic, and advised the agency against sending another worker into the home.

As the Case Management Agency had legitimate concerns about the safety of its employees – particularly since the Appellant had threatened gun violence against police and his own family - the Department acted correctly in proposing discontinuation of the Appellant's Aged/Disabled Waiver Services.

CONCLUSION OF LAW

The Department acted correctly in proposing discontinuation of the Appellant's services under the Aged/Disabled Waiver Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to discontinue the Appellant's services through the Aged/Disabled Waiver Medicaid Program.

ENTERED this 9th Day of September 2016.

**Pamela L. Hinzman
State Hearing Officer**