



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

February 28, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1011

[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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS
Central West Virginia Aging Services

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

████████████████████
Appellant,

v.

Action Number: 17-BOR-1011

**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 February 16, 2017, on a timely appeal filed January 4, 2017.

The matter before the Hearing Officer arises from the December 22, 2016 proposal of the Respondent to terminate the Appellant's Aged and Disabled Waiver Program (Program).

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████ RN, case manager with ██████████ ██████████ and ██████████ RN Program Supervisor with ██████████. The Appellant appeared *pro se* and testified on her own behalf. Appearing as witness for the Appellant was her live-in boyfriend and caretaker ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services, Aged and Disabled Home and Community Based Waiver Policy Manual §501.34
- D-2 Screen Print of Health PAS-Administrator Member billing sheets from April 1, 2016 through October 3, 2016
- D-3 Notice of Discontinuation of Services, dated December 22, 2016
- D-4 Central West Virginia Aging Services Inc. Service Recording Log from September 30, 2016 through October 10, 2016
- D-5 Coordinating Council for Independent Living (CCIL) Intake Progress Notes from May 25, 2016 through June 20, 2016

- c. The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures. This can be found at: <http://www.dhhr.wv.gov/bms/Programs/WaiverPrograms/ADWProgram/Pages/ADW-Manuals-and-Forms.aspx>
- C. The person is persistently non-compliant with the Service Plan.
- D. The person no longer desires services.
- E. The person no longer requires services.
- F. The person can no longer be safely maintained in the community. No personal attendant services have been provided for 180 continuous days.

DISCUSSION

The Respondent notified the Appellant by letter dated December 22, 2016, that it was discontinuing her ADW Program services because “no Personal Attendant services have been provided for 180 days.” The Respondent maintained that after repeated attempts since June 1, 2016, the Appellant failed to cooperate in initializing services with two separate personal care service agencies. The Respondent asserted that because there were 210 days without billable services, by policy, discharge was appropriate.

The Appellant asserted that she did need the personal services provided by the ADW program. The Appellant testified that she had been receiving personal attendant services through the ADW program for several years; however, there were staffing issues with the agency she had been utilizing. The Appellant was then transferred to [REDACTED] in June 2016. She was scheduled an initial appointment with [REDACTED] on June 14, 2016, however, because there was a mass shooting at the entrance to the road leading to her residence, access to her house was impossible and it had to be rescheduled.

[REDACTED] transferred the Appellant’s case to [REDACTED]. The evidence and testimony showed that [REDACTED] attempted to contact the Appellant several times beginning September 30, 2016. [REDACTED] called the Appellant and left several voice messages at her home and also attempted to reach those individuals identified in the Appellant’s case record as contacts. The last attempt by [REDACTED] to reach the Appellant was on October 10, 2016 when the RN and case manager tried to find the Appellant’s home, unsuccessfully.

The Appellant testified that she had been in and out of the hospital for several medical issues since June 2016, and in October she was “bounced” from house to house to receive post-hospital care because she was not receiving any personal attendant services, even though she wished to have them. The Appellant’s boyfriend [REDACTED] moved into her home in May 2016 and was living in the home during the period in which [REDACTED] and [REDACTED] attempted to contact the Appellant. The Appellant did testify that she had a traditional telephone “land” line at her house. Mr. [REDACTED] was identified as the Appellant’s caregiver providing her assistance with some of her activities of daily living. However, the Appellant did not present any plausible testimony or corroborating evidence as to her unavailability from June 14, 2016 to explain why she did not attempt to contact either [REDACTED] or [REDACTED] to restart personal attendant services.

The Appellant did not access personal attendant services through the ADW program after her case was transferred to [REDACTED] in June 2016. The Respondent correctly discontinued the Appellant's ADW program services for not accessing her personal attendant services for 180 continuous days.

CONCLUSIONS OF LAW

1. The Respondent showed that the Appellant failed to access personal attendant services for 180 continuous days.
2. The Respondent correctly discontinued the Appellant's program benefits.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to terminate the Appellant's services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 28th day of February 2017.

Lori Woodward, State Hearing Officer