

# State of West Virginia DEPARTMENT OF HEALTH ANDHUMAN 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



RE: v. WV DHHR

ACTION NO.: 17-BOR-1011

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 G	brueser, RN from the Bureau of Senior Servi	ces.
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 be	half. Appearing as witness for the Appellant	was
her live-in boyfriend and caretaker	All witnesses were sworn and the follow	/ing
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

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) The Appellant is a participant in the Aged and Disabled Waiver Program (ADW program).
- 2) Because there were issues with the Appellant's previous personal attendants through Senior Life Services of County (SLS), she requested a transfer to a different agency.
- 3) The Appellant was transferred to the Coordinating Council for Independent Living (CCIL) in May 2016.
- 4) CCIL scheduled an initial visit with the Appellant for June 14, 2016. However, because of a mass shooting at the entrance to the street leading to her residence, the visit was cancelled, to be rescheduled by the Appellant.
- 5) The Appellant was transferred (Exhibit D-4)
- was unable to reach the Appellant to schedule an initial visit after several attempts from September 30, 2016 through October 10, 2016. (Exhibit D-4)
- 7) The Respondent discontinued Appellant's ADW program services citing the reason as the Appellant not utilizing services for over 180 days. The Appellant was notified by letter dated December 22, 2016. (Exhibit D-3)

#### APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual (ADW policy) section 501.34.A allows discontinuation of services when:

- A. No Personal Attendant services have been provided for 180 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 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, the following circumstances:
  - a. The person receiving ADW services or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a Personal Attendant or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals or verbal threats to harm the Personal Attendant and/or other agency staff.
  - b. The person or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.

- 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 the in June 2016. She was scheduled an initial appointment with 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.

transferred the Appellant's case to the Appellant's case to the Appellant several times beginning September 30, 2016. 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 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 moved into her home in May 2016 and was living in the home during the period in which and attempted to contact the Appellant. The Appellant did testify that she had a traditional telephone "land" line at her house. Mr 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 to restart personal attendant services.

The Appellant did not access personal attendant services through the ADW program after her case was transferred to 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 28<sup>th</sup> day of February 2017.

Lori Woodward, State Hearing Officer