

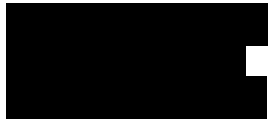


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 14, 2017



RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-1270

Dear Ms. [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
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 17-BOR-1270

**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 April 6, 2017, on an appeal filed February 13, 2017.

The matter before the Hearing Officer arises from the February 3, 2017 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 witnesses for the Respondent were ██████████, owner, ██████████; ██████████, Office Manager, ██████████; and ██████████, Personal Attendant, ██████████. The Appellant appeared pro se. Appearing as witnesses for the Appellant were ██████████, Appellant's daughter, and ██████████, Appellant's husband. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged & Disabled Waiver Services Manual Policy Sections 501.34 and 501.29
- D-2 Aged & Disabled Waiver Request for Discontinuation of Service dated January 25, 2017
- D-3 Discontinuation notice dated February 3, 2017, witness statement and Incident Information

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 February 3, 2017, the Respondent issued notice (D-3) to the Appellant, informing her of its decision to discontinue services under the Aged/Disabled Waiver Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) The Appellant's benefits were stopped because she allegedly threatened her personal attendant, [REDACTED] of [REDACTED], on January 24, 2017.
- 3) The incident occurred when Ms. [REDACTED] accidentally burned one of the Appellant's stove burner covers. The Appellant allegedly became angry, screamed at Ms. [REDACTED] and threatened to slap her. The Appellant reportedly told Ms. [REDACTED] to leave, and Ms. [REDACTED] stated that she got into her truck to leave, but the truck would not start. The Appellant then allegedly threatened to get a gun and shoot Ms. [REDACTED]. Ms. [REDACTED] testified that she was fearful and ran to the back of the house where she got into a car with the Appellant's sister (see Exhibit D-3).
- 4) [REDACTED], Office Manager with [REDACTED], was on the phone with Ms. [REDACTED] at the time of the incident, and provided similar details supporting Ms. [REDACTED] testimony.
- 5) The Appellant reportedly told [REDACTED], owner of [REDACTED], that she did not own a gun and could not hold a gun up on her shoulder.
- 6) Ms. [REDACTED] testified that her agency had placed two other substitute Personal Attendants in the Appellant's home, and neither wanted to return due to the Appellant's alleged behavior and mood swings.
- 7) [REDACTED], daughter of the Appellant, testified that her mother cannot lift her arms as the result of a stroke, and that there are no shotguns in the Appellant's residence.
- 8) The Appellant denied the incident, and testified that she needs assistance because she cannot use her arms and legs.

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.

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. The Department provided credible evidence that the Appellant screamed at her personal attendant, threatened to slap her, and then threatened to shoot her with a gun.

As the Case Management Agency had legitimate concerns about the safety of its employees in the Appellant's home, the Department acted correctly in discontinuing the Appellant's Aged/Disabled Waiver Services.

CONCLUSION OF LAW

The Department acted correctly in discontinuing 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 decision to discontinue the Appellant's services through the Aged/Disabled Waiver Medicaid Program.

ENTERED this 14th Day of April 2017.

**Pamela L. Hinzman
State Hearing Officer**