



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
4190 Washington Street, West  
Charleston, West Virginia 25313  
(304) 746-2360

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

August 15, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-2058

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,

Natasha Jemerison  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW

██████████,

Appellant,

v.

Action Number: 17-BOR-2058

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 August 10, 2017, on an appeal filed June 29, 2017.

The matter before the Hearing Officer arises from the June 21, 2017 decision by the Respondent to terminate Appellant's benefits and services under the Medicaid Aged and Disabled Waiver Program due to non-compliance.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Department was Deborah Casebolt, Case Manager. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged and Disabled Waiver Services Policy Manual §501
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service form with supporting documentation, dated June 16, 2017
- D-3 Aged and Disabled Waiver Service Plan

**Appellant's Exhibits:**

None

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 recipient of benefits and services under the Medicaid Aged and Disabled (ADW) Waiver Program.
- 2) The Appellant's Service Plan indicated she would receive Personal Attendant (PA) services three (3) hours per day, two (2) days per week. (D-3)
- 3) The Appellant last received PA services in March 2017, because she informed the agency that her apartment had bedbugs and requested a break in services until her home was treated. (D-2 and D-3)
- 4) On June 16, 2017, the agency requested the Appellant's services be discontinued. (D-2)
- 5) On June 21, 2017, the Appellant was notified that the services she received under the Medicaid Aged and Disabled Waiver (ADW) program were discontinued, because she was persistently non-compliant and did not utilize PA services for over 30 days. (D-2)

## **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**

On June 21, 2017, the Appellant was notified that the services she received under the Medicaid Aged and Disabled Waiver (ADW) program were discontinued, because Appellant was persistently non-compliant and did not utilize PA services for over 30 days. The Appellant requested a fair hearing to contest the Department's decision.

ADW policy allows discontinuation of services when the no Personal Attendant services have been provided for 180 continuous days. In this situation, a Request for Discontinuation of Services form must be completed.

The Department's representative, Tamra Grueser, testified that the Appellant was non-compliant with her ADW Service Plan. She stated that the Appellant was non-compliant because she did not utilize PA services monthly. The Appellant's Service Plan indicated she would receive Personal Attendant (PA) services three (3) hours per day, two (2) days per week. The Appellant last received PA services in March 2017, because she informed the agency that her apartment had bedbugs and requested a break in services until her home was treated.

The Appellant stated that she could not utilize the PA services during the time period that her apartment had bedbugs. She stated the apartment management instructed all residents to put their belongings in boxes, and it was too difficult having staff come into her home at that time. She also stated after her apartment was treated, she had to wait two (2) weeks to have her home inspected again to make sure the bedbugs were gone. The Appellant also admitted that she forgot to inform the agency when she was ready to receive services again.

After reviewing the evidence and testimony, it is clear the Appellant did not utilize services monthly as the Department stated. However, policy indicates that services are discontinued when no personal attendant services have been provided for 180 continuous days. Because the Appellant did not refuse services for 180 continuous days, the Department was incorrect in its decision to discontinue ADW services based on the use of PA services.

### **CONCLUSION OF LAW**

Because the Appellant did not refuse services for 180 continuous days, the Department was incorrect in its decision to discontinue ADW services based on the use of PA services.

**DECISION**

It is the decision of the State Hearing Officer to **reverse** the Department's decision to discontinue the Appellant's benefits and services received under the Medicaid Aged and Disabled Waiver Program due to non-compliance.

**ENTERED this 15<sup>th</sup> Day of August 2017.**

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**Natasha Jemerison  
State Hearing Officer**