



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Jim Justice
Governor

BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801

Bill J. Crouch
Cabinet Secretary

October 4, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2179

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau for Senior Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

██████████,

Appellant,

v.

Action Number: 17-BOR-2179

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 27, 2017, on an appeal filed July 26, 2017.

The matter before the Hearing Officer arises from the July 10, 2017, decision by the Respondent to discontinue the Appellant's services under the Aged and Disabled Waiver program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau for Senior Services. Appearing as a witness for the Respondent was ██████████, RN with ██████████. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

D-1 Bureau for Medical Services Provider Manual §501.29

D-2 Request for Discontinuation of Service dated July 3, 2017, and Notice of Discontinuation dated July 10, 2017

D-3 Aged and Disabled Waiver Log from April 2017 through June 2017, Aged and Disabled Waiver Service Plan for May 2017 through October 2017, Statements from ██████████, Log of Correspondence from July 2010 through July 2017

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 received services under the Aged and Disabled Program.
- 2) The Respondent notified the Appellant on July 10, 2017, that her services under the Aged and Disabled Waiver Program would be discontinued due to persistent non-compliance with the program (Exhibit D-2).
- 3) The Appellant has had several case management agencies during the years that she has received Aged and Disabled Waiver services.
- 4) Case management agencies have been unable to permanently staff the Appellant with a personal attendant, either due to their refusal to return to work for the Appellant, or the Appellant refusing their services (Exhibit D-3).
- 5) Statements obtained by personal attendants who have worked for the Appellant document that her house is cluttered and filthy, making it difficult for personal attendants to perform their duties (Exhibit D-3).
- 6) The Appellant has been verbally abusive to several personal attendants staffed with her care (Exhibit D-3).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.34 states the following will result in a discontinuation of Aged and Disabled Waiver services and require a Request for Discontinuation of Services Form:

- No Personal Attendant services have been provided for 180 continuous days
- 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:
 - The person receiving ADW [Aged and Disabled Waiver] 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.
 - The person or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
 - The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures.
- The person is persistently non-compliant with the Service Plan.
- The person no longer desires services.
- The person no longer requires services.
- The person can no longer be safely maintained in the community.

DISCUSSION

Pursuant to policy, services under the Aged and Disabled Waiver program may be discontinued if the participant is non-compliant with the service plan.

The Respondent contended that the Appellant's unsanitary living conditions prevented personal attendants sent to her home from performing duties as listed on the service plan. The Respondent noted that the Appellant has refused to allow her personal attendants to provide care, sending many attendants home.

The Appellant testified that the personal attendants assigned to her sit around all day or do not perform their duties to her satisfaction, or are unsanitary, therefore and she refused to allow them to care for her. The Appellant denied non-compliance with her service plan, reiterating that her agencies have failed to provide her with quality personal attendants.

The Respondent provided documentation of the Appellant's history of non-compliance with her personal attendants since 2016. Multiple personal attendants have refused to return to care for the Appellant due to the condition of her home, and their inability to perform their assigned duties. The Respondent's decision to discontinue Aged and Disabled Waiver services is warranted.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, services under the Aged and Disabled Waiver program may be discontinued if the participant is non-compliant with the service plan.
- 2) The Appellant has been persistently non-compliant with her care since 2016.
- 3) The Appellant's services under the Aged and Disabled Waiver program were correctly discontinued.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to discontinue the Appellant's services under the Aged and Disabled Waiver Program.

ENTERED this 4th day of October 2017

Kristi Logan
State Hearing Officer