



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1900 Kanawha Boulevard East  
Building 6, Room 817-B  
Charleston, WV 25305

Jim Justice  
Governor

Bill J. Crouch  
Cabinet Secretary

October 13, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-2346

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

David A. Bishop  
Administrative Law Judge  
State Board of Review

Enclosure: Appellant's Recourse Form IG-BR-29  
cc: Tamra Grueser, Bureau of Senior Services

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

██████████,

**Appellant,**

v.

**Action Number: 17-BOR-2346**

**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 October 4, 2017, from an appeal filed August 14, 2017.

The matter before the Board of Review arises from the decision by the Respondent to discontinue the Appellant's Aged and Disabled Wavier (ADW) program services.

At the hearing, the Respondent appeared by Tamra Gueser. The Appellant appeared pro se. ██████████ and ██████████ testified on behalf of the Respondent. The Appellant testified on her own behalf. All witnesses were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**Department's Exhibits:**

- D-1 Notice of Discontinuation and Discontinuation Documentation
- D-2 Service Plan
- D-3 Email Correspondence of ██████████ dated July 14, 2017

\* Judicial notice was taken of the ADW policy provisions provided by the Respondent.

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 following findings of fact are set forth:

## FINDINGS OF FACT

- 1) By letter dated August 9, 2017, the Respondent notified the Appellant of the discontinuation of approved ADW services due to persistent non-compliance. (Exhibit D-1)
- 2) March 1, 2017, was the Appellant's annual anchor date for ADW services. (Exhibit D-2)
- 3) On July 1, 2017, the Appellant's services were transferred from [REDACTED] to ADW service provider [REDACTED]. (Exhibit D-2)
- 4) On June 16, 2017, [REDACTED], Personal Attendant Supervisor for [REDACTED], went to the Appellant's apartment for assessment. The Appellant's home had no electricity and a significant cockroach infestation.
- 5) The Appellant was a tenant, with the responsibility of insect extermination and treatment residing with her landlord.
- 6) Ms. [REDACTED] informed the Appellant that cockroach extermination treatment and restoration of electric service was required to receive personal care services from [REDACTED]. Ms. [REDACTED] offered agency assistance in restoring the Appellant's electricity.
- 7) On June 27 and 28, 2017, transportation services were provided to the Appellant by a [REDACTED] personal attendant employee.
- 8) The personal attendant employee subsequently requested reassignment due to the unsanitary conditions of the Appellant's home.
- 9) On July 7, 2017, the Appellant's home was treated for the cockroach infestation.
- 10) On July 10, 2017, [REDACTED] and R.N. Case Manager [REDACTED] went to the Appellant's apartment.
- 11) The Appellant's apartment remained without power and the cockroach infestation remained significant. The Appellant slept with cotton balls in her ears at night. Ms. [REDACTED] and Ms. [REDACTED] refused to sit in the home due to visible cockroaches on all exposed surfaces.
- 12) The Appellant was informed by [REDACTED] that her case could not be staffed due to the unsafe and unsanitary conditions.
- 13) After the visit, [REDACTED] reported the unsafe conditions of the Appellant's home to Adult Protective Services due to concerns of self-neglect and environmental dangers. (Exhibit D-1)
- 14) On July 11, 2017, Adult Protective Services assigned the referral for investigation. (Exhibit D-1)

- 15) On July 24, 2017, ██████████ requested discontinuation of service to the Appellant due to the unsafe environment and noncompliance with the service plan. (Exhibit D-1)
- 16) On August 9, 2017, the Appellant's services were discontinued.
- 17) After discontinuation of ADW services, the Appellant successfully restored electric service to her home.

### **APPLICABLE AUTHORITY**

Bureau for Medical Services Policy Manual  
Chapter 501 Aged and Disabled Waiver

#### **501.34 Discontinuation of Services**

The following require a Request for Discontinuation of Services Form:

- 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.

...  
If it is an unsafe environment, services may be discontinued immediately upon approval of the OA, and all applicable entities are notified, i.e. police, Adult Protective Services.

When the OA receives an unsafe closure request, they will review and make a recommendation to BMS based upon the evidence submitted. Documentation to support the unsafe environment should come from multiple sources if possible, i.e., the Personal Attendant Agency and the Case Management Agency. Recommendations include:

1. Suspend services for up to ninety days to allow the person receiving ADW services time to remedy the situation. The CM will reassess at 30, 60 and 90 days and make a recommendation to the OA at any time during the 90 days suspension to reinstate services.
2. Immediate closure.

## DISCUSSION

On August 9, 2017, the Respondent discontinued approved ADW services for the Appellant. The decision was based on an unsafe environment and persistent non-compliance with the service plan. The Appellant contests the Respondent's determination.

To uphold a finding of discontinuation of services, the Respondent had to prove that the welfare of [REDACTED] staff was in jeopardy due to the unsafe environment of the Appellant's home. To uphold a finding of discontinuation of services from persistent noncompliance, the Respondent had to prove that the Appellant was non-compliant with her service plan over a prolonged period. The burden of proof applied is a preponderance of evidence standard.

It is uncontested that the Appellant's home was subject to a significant cockroach infestation and without electricity. The home was in an unsanitary state, which was not safe for the Appellant or her personal care attendants. The Respondent's immediate discontinuation of the Appellant's ADW services due to the unsafe and unsanitary conditions, that threatened the welfare of the service provider employees, is supported by the evidence presented and controlling policy.

The Appellant argues however that she was not given an adequate amount of time to correct the safety issues in her home. The Appellant avers that the home has since been repeatedly been treated for the cockroach infestation and power has been restored.

On July 10, 2017, the Appellant's service plan was executed. On July 24, 2017, discontinuation of services was requested by the care provider.

The Appellant correctly argues that she was not given a prolonged period to comply with the service plan mandate to restore power and have her landlord eradicate the cockroach infestation. The 14 days given to Appellant, in which she failed to complete her service plan mandates, cannot reasonably be considered a prolonged period, and therefore unable to support a finding of persistent non-compliance.

Based on the evidence presented, the Respondent's discontinuation of the Appellant's ADW services is sustained. The Respondent showed by a preponderance of evidence that the welfare of [REDACTED] staff was in jeopardy due to the unsafe environment of the Appellant's home, which was unsanitary, infested with cockroaches, and without electricity. The Respondent however did not prove by a preponderance of evidence that the Appellant was persistently non-compliant with her service plan.

## CONCLUSIONS OF LAW

- 1) The Respondent was authorized to discontinue the Appellant's ADW services.
- 2) The Respondent showed by a preponderance of evidence that the welfare of [REDACTED] staff was in jeopardy due to the unsafe environment of the Appellant's home, which was unsanitary, significantly infested with cockroaches, and without electricity.

- 3) The Respondent did not prove by a preponderance of evidence that the Appellant was persistently non-compliant with her service plan.
- 4) The 14 days given to Appellant from her service plan execution to the provider's request for discontinuation, in which she failed make her home safe, sanitary and to restore power, cannot reasonably be considered a prolonged period and therefore is unable to support a finding of persistent non-compliance.

### **DECISION**

The decision of the Respondent to discontinue the Appellant's ADW services is **upheld**.

ENTERED this 13<sup>th</sup> day of October 2017.

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David A. Bishop  
Administrative Law Judge  
Board of Review