

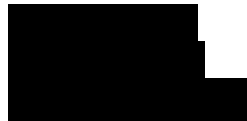


State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

April 10, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1352

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

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

██████████,

Claimant,

v.

Action Number: 15-BOR-1352

**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 1, 2015, on an appeal filed January 26, 2015.

The matter before the Hearing Officer arises from the January 12, 2015 decision by the Respondent to discontinue the Claimant's Aged/Disabled Waiver Medicaid Program services based on an unsafe environment and noncompliance.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Director, ██████████; ██████████, Co-Director, ██████████; and ██████████, Homemaker-Registered Nurse, ██████████. The Claimant appeared pro se. Appearing as witnesses for the Claimant were ██████████, Case Manager, ██████████; ██████████, Claimant's private care provider; and ██████████, Claimant's friend. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged & Disabled Waiver Services Manual Policy Section 501.17
- D-2 Aged & Disabled Waiver Request for Discontinuation of Service dated January 9, 2015
- D-3 Member Detail information from APS Healthcare
- D-4 Information from ██████████, ██████████, and Incident Information gathered from ██████████, ██████████, ██████████ and ██████████ from 2013, 2014 and January 2015

- D-5 Documentation from [REDACTED] faxed to Tammy Grueser on January 12, 2015
- D-6 Electronic mail transmissions concerning a Recipient Fraud Referral dated January 13, 2015

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 January 12, 2015, the Respondent issued notice to the Claimant, informing her of its decision to discontinue services under the Aged/Disabled Waiver Medicaid Program due to an unsafe environment and participant noncompliance.
- 2) Tammy Grueser, Registered Nurse with the Bureau of Senior Services (BoSS), testified that the Claimant's services were discontinued due to a history of noncompliance and allegations that the Claimant engaged in drug sales in the presence of agency homemakers assigned to her care.
- 3) Exhibit D-4 indicates that BoSS staff member [REDACTED] lodged a Recipient Fraud Referral regarding the Grievant in February 2014 after she received information from [REDACTED]s, Registered Nurse at [REDACTED] that the agency planned to request closure of the Claimant's case due to an unsafe environment. According to Exhibit D-4, Ms. [REDACTED] indicated that three different homemakers with [REDACTED] reported alleged drug activity in the Claimant's home, and all three homemakers refused to go back into the residence because they were fearful of the situation. Ms. [REDACTED] alleged that the Claimant was prescribed Xanax and Oxycodone, and was "selling her pills." In addition to the alleged drug activity, Ms. [REDACTED] indicated that all of the homemakers reported that the Claimant "does everything for herself" in regard to activities of daily living, but "tells WVMi that she can't."

In the fraud referral, Ms. [REDACTED] stated that several agencies had been involved with the Claimant's care throughout her time on the Aged/Disabled Waiver Program, and all of the agencies reported that the Claimant allegedly had homemakers take her out into the community so that she could sell pills in exchange for money. Ms. [REDACTED] specified that seven incidents and/or complaints were reported during the period of November 12, 2013 through January 6, 2015, from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

The Department provided documentation of the following alleged incidents and/or complaints:

January 6, 2015 (incident reported by [REDACTED]) – A homemaker refused to go back into the Claimant’s residence after the Claimant asked her to take her to [REDACTED] to pick up something. Upon her arrival in the [REDACTED] parking lot, a truck driver pulled up beside the homemaker’s car, at which time the Claimant gave him pills in exchange for money. The Claimant then asked the homemaker to take her to a furniture store because she had to make a payment on her furniture. Once at the furniture store parking lot, the Claimant again gave a man pills in exchange for money. The homemaker took the Claimant home and called in sick the next day because she was afraid to tell her employer about the incident. The homemaker went to the employer two days later to explain why she missed work and to inform the agency that she did not wish to be involved with that kind of activity.

November 21, 2014 ([REDACTED])- Homemaker reported witnessing possible drug trafficking in the Claimant’s home and in a grocery store parking lot. Incidents were reported to the West Virginia State Police.

March 5, 2014 ([REDACTED])- Two out of three homemakers reported witnessing what they believed were drug transactions, and also observed needles and a spoon in the house. The homemakers were reportedly afraid to go back into the home.

February 9, 2014 ([REDACTED])- Homemaker reported possible drug trafficking in the Claimant’s home. Information reported to law enforcement.

November 12, 2013 ([REDACTED])- Claimant was allegedly verbally abusive to homemakers and threatened to punch them in their faces. The Claimant found a reason on a daily basis to have homemakers transport her to places to make drug transactions. She was reportedly selling and trading her prescription drugs, and homemakers indicated that she liquefied medicine – such as morphine pills – and then injected herself with the liquefied medication through a syringe. The Claimant reportedly left an unprescribed pill and a syringe in a homemaker’s car by accident. The homemakers complained that the Claimant is angry and impatient, and would not let them complete their work because she demanded to run around town. The Claimant told homemakers that she needed to go to a store, and drug dealers would be waiting or pull up upon her arrival. The homemakers were reportedly frightened and intimidated by the Claimant, who called or texted them at all hours. They reported that the Claimant would call a doctor’s office or hospital if they reported they were sick to try and obtain information about them. The homemakers also complained about needles sticking out of trash bags or sitting exposed on a stand in the residence, and noted that they had washed burnt spoons.

Nurse Grueser provided Exhibit D-5, which includes a written statement from [REDACTED] Homemaker [REDACTED] dated January 12, 2015. In her statement, Ms. [REDACTED] indicated that she went to work on January 5, 2015 at the Claimant’s home, and the

Claimant had made telephone calls to a truck driver and an individual named “ [REDACTED] Ms. [REDACTED] stated that the weather was snowy that day and the Claimant cancelled her doctor’s appointment. She then told Ms. [REDACTED] that she needed to go out and get her insulin at [REDACTED] and go to [REDACTED] to get money from a truck driver who had borrowed money from her. Ms. [REDACTED] said she transported the Claimant to [REDACTED], at which time they pulled up beside a truck driver. The truck driver reportedly got out of his vehicle and Ms. [REDACTED] observed the Claimant exchange pills she had taken out of a pill cylinder for money. The Claimant then indicated that she needed to make a furniture payment at [REDACTED] house. She stated that “ [REDACTED] came out and the Claimant handed her money. [REDACTED] counted the money and then handed the Claimant some pills. Ms. [REDACTED] reported observing a marijuana bowl on a dresser in the Claimant’s home and the Claimant reportedly told her that she smoked marijuana. The next day, the Claimant asked Ms. [REDACTED] to transport six bags of garbage to the [REDACTED] apartment building and put them into a dumpster. Ms. [REDACTED] said that when she left, she was afraid to dump the garbage and afraid to go back to the Claimant’s residence.

A written statement signed by Homemaker [REDACTED] of [REDACTED] indicates that Ms. [REDACTED] asked to be removed from the Claimant’s home because she felt it was an unsafe environment. Ms. [REDACTED] contended that there were burnt spoons and medication all over the Claimant’s residence, and that the Claimant was “in another world at times.”

Information included in D-5 indicates that the Claimant contacted [REDACTED], Co-Director of [REDACTED] on January 9, 2015, and Mr. [REDACTED] informed her that the agency could not place another worker in her home based on allegations of drug trafficking. The Claimant contended that she was not a drug dealer and had receipts to verify that she made payments on her furniture. Documentation indicates that representatives of [REDACTED] reported the allegations to law enforcement officials.

- 4) During the hearing, the Claimant denied threatening her homemakers or selling drugs. She testified that she has never been visited by police and is “innocent until proven guilty.” The Claimant contended that she is diabetic and takes four shots of insulin per day. She stated that someone had been stealing her medication, so she had asked other individuals to keep it for her.

The Claimant’s friend, [REDACTED] (also known as [REDACTED]”), testified that she kept the Claimant’s medication for her because the Claimant felt it would be safer at her house. The Claimant would then come to her house and pick up the medication as needed.

[REDACTED], Case Manager with [REDACTED], testified that he went to the Claimant’s residence and completed an evaluation. He indicated that the Claimant denied illegal drug use, and told him that her medications had come up missing, so she no longer kept them in the house. Mr. [REDACTED] said that the Claimant produced all of her medications for him the next day, and he observed nothing unusual about the quantity of medication. He stated that [REDACTED] had asked him to report his findings to the police; however, he refused to do so because he observed no unusual activity at the

Claimant's home and felt that any such report would violate client/social worker privilege. Mr. [REDACTED] contended that the Claimant's discontinuation of services was based on hearsay information.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.17 (D-1) states that services can be discontinued due to reports of an unsafe environment (one in which the personal assistance/homemaker and/or other agency staff are threatened or abused and the staff's welfare is in jeopardy). This can include instances in which the member or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a personal assistance/homemaker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals. It can also include instances in which the member or other household members display an abusive use of alcohol and/or drugs. Services can also be discontinued when an individual is persistently noncompliant with his/her Plan of Care.

The Request for Discontinuation of Services Form must be submitted to the Bureau of Senior Services (BoSS). BoSS will review all requests for discontinuation of services. If the request is appropriate, and BoSS approves the discontinuation, BoSS will send notification of discontinuation of services to the member (or legal representative) with a copy to the Case Management Agency or F/EA.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be discontinued when agency staff report that an unsafe environment exists concerning the individual for whom they are providing care.

Documentation reveals that the Claimant has had services through four different case management agencies from 2013 to the present. Every single case management agency with which the Claimant received services documented complaints from numerous homemakers who allegedly witnessed the Claimant exchanging drugs for money. While the Claimant contended during the hearing that her friend "[REDACTED]" was merely keeping her prescription drugs for safety reasons, agency reports reveal specifically that homemakers observed the Claimant exchange drugs with unknown truck drivers for money. The Claimant is reportedly diabetic – which may account for some syringes in her residence – however, workers also observed marijuana paraphernalia and burnt spoons in the household.

The Claimant denied threatening her homemakers, but it is clear from the Department's documentation that numerous homemakers feared her and/or her household situation. The Department provided convincing documentation (i.e., complaints/incident reports/written

statements) to corroborate its contention that homemakers felt unsafe in providing care for the Claimant in her home and driving her - in their vehicles - to locations at which they felt illegal drug transactions were being conducted.

Based on information provided during the hearing, the Department acted correctly in discontinuing the Claimant's Aged/Disabled Waiver Services.

CONCLUSIONS OF LAW

The Department acted correctly in discontinuing the Claimant'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 Claimant's services through the Aged/Disabled Waiver Medicaid Program.

ENTERED this 10th Day of April 2015.

**Pamela L. Hinzman
State Hearing Officer**