



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

June 11, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-1838

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] Senior Center

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

██████████,

Appellant,

v.

Action Number: 15-BOR-1838

**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 June 3, 2015, on an appeal filed March 23, 2015.

The matter before the Hearing Officer arises from the March 13, 2015 decision by the Respondent to discontinue the Claimant's Aged/Disabled Waiver Medicaid Program services based on non-compliance.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. The Appellant was represented by her daughter, ██████████. Appearing as witnesses for the Appellant were ██████████, Case Manager, ██████████; ██████████, Case Manager, ██████████, RN, ██████████ Senior Center; ██████████, Appellant's daughter; and ██████████, Appellant's son-in-law. 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 March 17, 2015
- D-3 Discontinuation notice dated March 13, 2015
- D-4 ██████████ Senior Center Homemaker Hours for the period of January 2014 through January 2015
- D-5 Member billing information
- D-6 Aged and Disabled Waiver Service Plan, Member Assessment and Plan of Care
- D-7 Technical guidance information provided via electronic mail transmission to Tamra Grueser from ██████████ dated June 2, 2015

D-8 Centers for Medicare & Medicaid Services correspondence dated August 5, 2011

Appellant's Exhibits:

- A-1 Aged & Disabled Waiver Services Manual Policy Section 501.5.1.1(b)
- A-2 Information and notes from Aged/Disabled Waiver Manual Training- 2011
- A-3 [REDACTED] Service Recording Log and Case Management Monthly Contact
- A-4 Electronic mail transmissions between [REDACTED] and various individuals

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 March 13, 2015, the Respondent issued notice (D-3) to the Appellant, informing her of its proposal to discontinue services under the Aged/Disabled Waiver Medicaid Program due to non-compliance with program guidelines.
- 2) Tammy Grueser, Registered Nurse with the Bureau of Senior Services (BoSS), testified that the Appellant's Aged/Disabled Waiver services were discontinued because she is not utilizing the services as dictated in her Plan of Care. Ms. Grueser contended that the Appellant has been utilizing an Aged/Disabled Waiver Program slot in West Virginia, but is residing in the state of Ohio with her daughters the majority of the time. She referred to the waiting list of individuals who wish to receive in-home care in West Virginia, and maintained that the Appellant's Waiver slot should not be utilized for such a small number of hours per month. Ms. Grueser indicated that the Appellant received Waiver services for only 10 hours during the month of January 2015, according to Exhibit D-4. She contended that the Appellant is also receiving a West Virginia Medicaid card as a result of her Aged/Disabled Waiver eligibility.
- 3) Ms. Grueser provided D-7, an electronic mail transmission in which she received technical guidance information concerning the Appellant's circumstances based on information from the Centers for Medicare and Medicaid Services. This information states that in order for an individual to be considered to require a level of care specified for Waiver, it must be determined that the person requires at least one waiver service (as evidenced by the service plan) and requires the provision of waiver services at least monthly or, if less frequently, requires monthly monitoring (as documented in the service plan) to assure health and welfare. The information goes on to state that individuals may not be enrolled in a Waiver program for the sole purpose of enabling them to secure Medicaid eligibility, and their entrance to Waiver is contingent upon

them requiring one or more services offered by the Waiver program to avoid institutionalization.

- 4) [REDACTED], Case Manager with [REDACTED] contended that her agency provides monthly case management services to the Appellant, and stated that an individual is not required to utilize all of his/her homemaker service hours if informal supports are available. Ms. [REDACTED] testified that she believes the Appellant is complying with her Plan of Care. [REDACTED], RN, [REDACTED] Senior Center, testified that she does not believe Exhibit D-4 accurately depicts the Appellant's total number of homemaker service hours.
- 5) The Appellant's witnesses contended that the Appellant maintains a permanent residence in West Virginia. [REDACTED], the Appellant's daughter, testified that she brings her mother back to her residence in West Virginia at least one week per month, and her mother receives homemaker services during that time. Ms. [REDACTED] explained that the Appellant was previously receiving four hours of homemaker services per day while residing full-time at her home in West Virginia, but her residence had been robbed. Ms. [REDACTED] stated that the Appellant requires 24-hour care, and that the current living arrangement allows Ms. [REDACTED] to care for her mother so that she will not have to be placed in a long-term care facility. Ms. [REDACTED] stated that the Appellant has lived in her West Virginia residence since 1965, and that she likes to take her mother back to her home on a monthly basis.
- 6) The Appellant's Service Plan, Member Assessment and Plan of Care (D-6) provides information concerning the Appellant's care needs. Notations located in the monthly comments section of the Plan of Care provide information concerning the dates the Appellant is away from home staying with her daughter. The Appellant's Service Plan indicates that the Appellant will receive services from the [REDACTED] Senior Center, care from her family, and monthly case management services.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.17 (D-1) states that services can be discontinued when a member is consistently non-compliant with his 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 a 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.

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.5.1.1(b) (A-1) states that a member does not have to utilize the number of hours specified in their Service Level if their needs are being met through other means, such as informal supports.

(Example: A member who is Level C may only choose to access Level B hours of service due to informal supports that assist him/her). This must be documented on the Service Plan and the Case Manager must monitor that all services on the Service Plan, including informal supports, are delivered. The total number of hours may be used flexibly within the month, but must be justified and documented on the Plan of Care. Traditional Service Levels for the program include a minimum range of 0 to 62 homemaker service hours per month at Level A, up to a maximum of 155 hours at Level D.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be discontinued when an individual is persistently non-compliant with his/her Plan of Care. While the Appellant stays at her daughter's residence in [REDACTED] – so that her daughter can provide informal support in regard to her personal care needs – testimony revealed that the Appellant continues to maintain her home in West Virginia and resides there for a period of time each month. Testimony also reveals that the Appellant receives monthly case management services and continues to receive homemaker services when she is at home in West Virginia. The Appellant's Plan of Care includes documentation of the homemaker services the Appellant receives while at her home, as well as notations about the periods of time the Appellant did not receive homemaker services because she was at her daughter's residence in [REDACTED]. While the Department contended that the Appellant is using only a small number of homemaker service hours and that other individuals are on a waiting list for Aged/Disabled Waiver services, policy does not require an Aged/Disabled Waiver Medicaid recipient to utilize the total number of hours specified in his/her Service Level if his/her needs are being met through other means, such as informal supports. Furthermore, policy dictates that an individual may access hours at a lower level of care if informal supports are available to him/her, with the lowest Level of Care stipulated as Level A, 0 to 62 hours per month. Therefore, the Department has failed to establish that the Appellant is non-compliant with her Plan of Care.

CONCLUSIONS OF LAW

The Department acted incorrectly in proposing discontinuation of the Appellant's services under the Aged/Disabled Waiver Medicaid Program.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's proposal to discontinue the Appellant's services through the Aged/Disabled Waiver Medicaid Program.

ENTERED this 11th Day of June 2015.

**Pamela L. Hinzman
State Hearing Officer**