



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

September 29, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 15-BOR-2769

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS

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

██████████
Appellant,

v.

Action Number: 15-BOR-2769

**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 22, 2015, on a timely appeal filed July 23, 2015.

The matter before the Hearing Officer arises from the July 9, 2015 proposal of the Respondent to terminate the Appellant's Aged and Disabled Waiver Program (Program) benefits due to a determination of non-compliance with the Program.

At the hearing the Respondent appeared by Tamra Grueser, RN from the Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████ with ██████████ and Susie Layne with the Bureau for Medical Services. The Appellant appeared *pro se*. Appearing for the Appellant were ██████████, Appellant's mother, ██████████, neighbor, and ██████████, Homemaker/Attendant with ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services, Aged and Disabled Home and Community Based Waiver Policy Manual §501.17 (excerpt)
- D-2 Notice of Discontinuation of services, dated July 9, 2015
- D-3 Electronic mail (email) from ██████████ to ██████████ and forwarded to Tamra Grueser, dated July 9, 2015
- D-4 WV Incident Management System report - Adult Protective Services referral dated July 2, 2015; WV Incident Management System report dated November 7, 2014; WV Incident Management System report dated January 19, 2015; WV Incident Management System report dated February 16, 2015; WV Incident Management System report dated April 9,

2015; WV Personal Options ADW Contact Form dated September 2, 2014; WV Personal Options ADW Contact Form dated November 10, 2014; WV Personal Options ADW Contact Form dated December 18, 2014; WV Personal Options ADW Contact Form (1 of 2 reports) dated January 12, 2015; WV Personal Options ADW Contact Form (2 of 2 reports) dated January 12, 2015; WV Personal Options ADW Contact Form (1 of 2 reports) dated February 10, 2015; WV Personal Options ADW Contact Form (2 of 2 reports) dated February 10, 2015; WV Personal Options ADW Contact Form dated February 11, 2015; WV Personal Options ADW Contact Form dated February 16, 2015; Adult Protective Services Mandatory Reporting Form dated February 16, 2015; WV Personal Options ADW Contact Form dated February 17, 2015; WV Personal Options ADW Contact Form dated February 18, 2015; WV Personal Options ADW Contact Form dated February 23, 2015; WV Personal Options ADW Contact Form dated March 16, 2015; WV Personal Options ADW Contact Form dated April 9, 2015; WV Personal Options ADW Contact Form dated April 29, 2015; WV Personal Options ADW Contact Form dated April 30, 2015; WV Personal Options ADW Contact Form dated May 20, 2015; September 2, 2014; WV Personal Options ADW Contact Form dated June 16, 2015; WV Personal Options ADW Contact Form dated June 17, 2015; WV Personal Options ADW Contact Form (1 of 2 reports) dated June 18, 2015; WV Personal Options ADW Contact Form dated June 18, 2015 (2 of 2 reports); WV Personal Options ADW Contact Form dated July 1, 2015; WV Personal Options ADW Contact Form dated July 2, 2015; *WV Personal Options: Aged and Disabled Waiver Notice of Discontinuation of Services, dated July 1, 2015

- D-5 Emails from [REDACTED] to [REDACTED], April 24, 2015, April 27, 2015, April 28, 2015, May 4, 2015, and July 9, 2015
- D-6 Medicaid Fraud Control Unit Abuse, Neglect & Financial Exploitation Referral Form, dated November 2014
- D-7 Aged and Disabled Waiver Program Medical Necessity Evaluation Request, dated April 30, 2015 and letter dated April 30, 2015 to Dr. [REDACTED]
- D-8 ADW Participant Agreement, dated April 29, 2015

*Note: Respondent tried to introduce this document into evidence, however, it was not found at the time of the hearing. This document was among the papers attached to and included in Exhibit D-4

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 participant in the Aged and Disabled Waiver Program, Personal Options Model, which is participant-directed. Under this model, the Appellant is responsible for hiring his own attendants, and monitoring that the attendants' timesheets were submitted in a timely manner.

2) The Appellant signed an ADW Participant Agreement (Agreement) on April 29, 2015 wherein he agreed to the following:

- I agree to request my attendants to assist me with the activities of daily living as identified in my service plan.
- I agree to monitor and verify that my employees submit their timesheets and attendant monthly documents timely.
- I agree to maintain a safe environment for personal attendant services to be provided to me through the Medicaid Aged and Disabled Waiver Program.
- I will allow my personal attendants and all PPL staff to enter my home and assist me with my services without threats or harm.
- I agree not to have weapons (guns) in the apartment and will not threaten to harm persons who knock on my door.
- I understand that it is dangerous to smoke with oxygen turned on in the same room. I agree not to create this risk for my attendants.
- I understand that manual bowel evacuation cannot be performed by my attendant under the Aged and Disabled Waiver Program. I understand that in consultation with my Primary Care Physician, I may be able to receive assistance with constipation with a Home Health agency.
- I understand that I may request a case manager who will assist me with my personal issues that challenge my participation in the ADW program.

(Exhibit D-8)

- 3) On July 1, 2015, [REDACTED] with [REDACTED] (the service management group assigned to the Appellant) requested that the Appellant's Program benefits be discontinued for Program non-compliance. (Exhibit D-4)
- 4) On July 9, 2015, the Appellant was notified that his benefits and services provided through the Program were being discontinued due to non-compliance under the Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 501.17.C. (Exhibit D-2)
- 5) The Appellant is bedbound and has limited informal support.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual (ADW policy) section 501.1 defines Participant-Direction - the member, or his/her representative, have decision-making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports. Participant-Direction promotes personal choice and control over the delivery of waiver and state plan services, including who provides the services and how services are provided.

ADW policy section 501.2 explains that within the ADW program, members may choose from either the Traditional (Agency) Model or the Participant-Directed Model known as Personal Options for service delivery. In the Traditional Model, members receive their services from employees of a

certified provider agency. Members have individualized service hours based on their assessed level of need. In Personal Options, members are able to hire, supervise and terminate their own employees. Members are allocated a monthly budget based on their assessed level of need.

ADW policy section 501.9 explains that the Plan of Care details how Personal Assistance/Homemaker services will be used to meet the direct care needs of the member.

ADW policy section 501.14, in part, requires, at a minimum, Case Management Agencies or for Personal Options PPL must communicate in writing to each member (or legal representative) his or her right to: transfer to a different provider agency or to Personal Options; address dissatisfaction with services through the provider agency's or PPL's grievance procedure; considerate and respectful care from his or her provider(s); take part in decisions about his or her services. A member is required to, in part: Comply with the Plan of Care or for Personal Options Members, comply with the Participant-Directed Service Plan; maintain a safe home environment for the agency or PPL to provide services.

ADW policy section 501.17.C stipulates that a Request for Discontinuation of Services Form be submitted and approved by BoSS if the member is persistently non-compliant with the Plan of Care.

DISCUSSION

The Respondent notified the Appellant by letter dated July 9, 2015, that it was discontinuing his Program benefits "due to noncompliance with the ADW program", citing Medicaid Aged and Disabled Waiver Program Policy and Procedures Manual, Chapter 501.17.C. This policy section allows for closure of program benefits if a member is consistently non-compliant with the Plan of Care.

Under the Personal Options Model, the Participant-Directed Service Plan (Service Plan) is the equivalent of a Plan of Care. Per policy, a program participant is required to comply with the Service Plan. While the Respondent contended that the Appellant should be closed for non-compliance with the Plan of Care, no Plan of Care, or in this case, a Service Plan, was provided by the Respondent to establish there was persistent non-compliance on the part of the Appellant. There was no testimony presented as to the requirements contained within the Appellant's Service Plan or that the ADW Participant Agreement was a part of the Appellant's Service Plan.

The Respondent introduced testimony to try to establish that there were unsafe conditions present in the Appellant's home; however, this was not the issue upon which the Respondent based the termination. The Notice sent to the Appellant cited specifically the policy upon which it had made its decision, Chapter 501.17.C. This policy section noticed to the Appellant addresses persistent non-compliance with the Plan of Care by the member.

It is noted that the linguistics of the notice appears confusing as it notifies that the Appellant's services are being discontinued due to a broad statement of "**noncompliance with ADW program**"; yet, the policy upon which it bases the termination specifically states that the member must be found to be "persistently non-compliant with the Plan of Care".

At the hearing, the Respondent equated general non-compliance with the Program itself, and not the Plan of Care (Service Plan), *per se*. The Respondent provided testimony and evidence that the Appellant entered the ADW Participant Agreement in April 29, 2015, the terms of which he failed to comply. The Respondent's witness testified that it was the Appellant's responsibility under the Personal Options Model and under the terms of the Agreement to ensure that his attendants submit their timesheet in a timely manner. His attendant, [REDACTED] (Ms. [REDACTED]) failed to turn in her timesheet by the due date on several occasions. The excuse given to the agency was that she had to pick her child up from daycare and the Appellant would not allow her to leave early so that she could fax in her timesheet. Although the testimony showed that the Appellant had the responsibility to monitor or verify that his employees (attendants) submitted their timesheets in a timely manner under the Personal Options Model, there was no evidence presented that this was a requirement under his Plan of Care (Service Plan) to do so. Additionally, the Respondent contended the Appellant was non-compliant with the program by failing to hire or keep his attendants. However, in the Personal Options Model, members are able to hire, supervise and terminate their own employees.

The Respondent wishes the Board of Review to broadly define and assume that a member's Plan of Care (Service Plan) includes the whole of the ADW program. However, there was no evidence presented to show that a member's Plan of Care (Service Plan) encompasses such a broad definition.

CONCLUSIONS OF LAW

The Respondent failed to show that the Appellant was non-compliant with his Plan of Care (Service Plan) and, therefore, the decision to terminate the Appellant's Program benefits cannot be upheld.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Department's proposal to terminate the Appellant's benefits and services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 29th day of September 2015.

Lori Woodward, State Hearing Officer