



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review**  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326

**M. Katherine Lawson**  
Inspector General

August 14, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 18-BOR-1798

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,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Tamra Grueser, Bureau of Senior Services  
[REDACTED]

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

████████████████████,

**Appellant,**

v.

**ACTION NO.: 18-BOR-1798**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on July 31, 2018, on an appeal filed June 7, 2018.

The matter before the Hearing Officer arises from the April 27, 2018 determination by the Respondent to terminate Medicaid Aged and Disabled Waiver Program (ADW) services.

At the hearing, the Respondent appeared by Tamra Grueser, Bureau of Senior Services. Appearing as witness for the Respondent was ██████████, ██████████. The Appellant appeared by ██████████, her husband. Appearing as witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services (BMS) Manual §501.34
- D-2 Facsimile Report, dated April 26, 2018
- D-3 Medicaid Billing History, claims dated January 6, 2018 through May 16, 2018

**Appellant's Exhibits:**

None

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) The Appellant is a recipient of Medicaid Aged and Disabled Wavier Program (ADW) services. (Exhibits D-2 and D-3)
- 2) On October 10, 2017, the Appellant was discharged from a Long-Term Care (LTC) facility and began receiving ADW in-home services.
- 3) In November 2017, the Appellant was admitted to an LTC facility.
- 4) The Appellant has transferred between LTC facilities since her November 2017 admission but has resided continuously in an LTC facility since that time. (Exhibit D-3)
- 5) On April 27, 2018, the Respondent issued a notice advising the Appellant that her ADW services would be terminated because no ADW Personal Attendant (PA) services had been provided for 180 days. (Exhibit D-2)

## APPLICABLE POLICY

### **Bureau for Medical Services (BMS) Manual §501.17 provides in part:**

Personal Attendant (PA) services are defined as long-term direct care and support services that are necessary to enable a person to remain at home rather than enter a nursing home, or to enable a person to return home from a nursing home.

### **BMS Manual §501.22 provides in part:**

No ADW services may be charged while an individual is inpatient in a nursing home, hospital, rehabilitation facility, or other inpatient medical facility, except for PA services. PA services may be provided on the day of admission and the day of discharge.

### **BMS Manual §501.34(A) provides in part:**

A discontinuation of services may be requested when no PA services have been provided for 180 continuous days.

## DISCUSSION

The Appellant is a recipient of ADW services. On April 27, 2018, the Respondent issued a notice advising the Appellant that her ADW services would be terminated because no ADW PA services had been provided for 180 days. The Appellant contested the Respondent's decision to terminate services and argued that the Appellant would require ADW in-home services upon her discharge from the LTC facility.

The Respondent had to prove that ADW PA services were not provided to the Appellant for 180 continuous days. During the hearing, the Respondent's witness testified that the Appellant was discharged from a LTC facility on October 10, 2017 and began receiving ADW in-home services. The parties agreed that the Appellant has transferred between LTC facilities but has resided in a LTC facility since November 2017.

The Respondent's termination notice was issued on April 27, 2018. Pursuant to policy, a discontinuation of ADW services was permitted to be requested if no PA services had been provided to the Appellant for 180 continuous days prior to the termination notice. Prior to the date of the termination notice, 180 days was October 29, 2017. It should be noted that although it appears the termination notice may have been issued prior to the conclusion of the 180 continuous days of non-utilization of ADW services, the parties agreed that the Appellant has resided in an LTC facility since November 2017. Per policy, PA services may not be provided while the Appellant is inpatient at an LTC facility. At the time of the hearing, the Appellant had not utilized ADW services for more than 180 continuous days.

The Appellant's husband voiced concerned over not being able to care for the Appellant upon discharge from the LTC facility; however, there are no exceptions supported by policy to allow for ADW services to continue beyond 180 continuous days of non-utilization of PA services. During the hearing, the Respondent provided information to the Appellant regarding potential services that could be available to the Appellant upon her discharge from the LTC facility. Because the Appellant is inpatient at an LTC facility and ADW PA services have not been provided for more than 180 continuous days, the Respondent was correct to terminate the Appellant's ADW services.

### **CONCLUSIONS OF LAW**

- 1) Discontinuation of ADW services may be requested if no PA services have been provided to the Appellant for 180 continuous days.
- 2) The Appellant has been a resident of an LTC facility since November 2017.
- 3) The Appellant has not utilized ADW PA services for more than 180 continuous days.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Department's decision to terminate the Appellant's Medicaid Aged and Disabled Waiver Program (ADW) services due to no ADW Personal Attendant services being provided to the Appellant for 180 continuous days.

ENTERED this 14<sup>th</sup> day of August 2018.

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**Tara B. Thompson**  
State Hearing Officer