



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
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M. Katherine Lawson
Inspector General

August 6, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:18-BOR-1861

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,

A handwritten signature in blue ink, reading "Danielle Jarrett".

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
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: 18-BOR-1861

**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 July 24, 2018, on an appeal filed June 12, 2018.

The matter before the Hearing Officer arises from the May 22, 2018 decision by the Respondent to discontinue services received under the Medicaid Aged and Disabled Waiver program due to non-compliance with members responsibilities and unsafe environment.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau of Medical Services Provider Manual §§ 501.29 and 501.34
- D-2 Request for Discontinuation of Service dated April 27, 2018, and Notice of Discontinuation dated May 22, 2018
- D-3 Aged and Disabled Waiver Log from April 23, 2018 through April 27, 2018, Statements from ██████████ Home Care, Log of Correspondence from April 16, 2018 through April 27, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant has been a participant in Aged and Disabled Waiver Program (ADW program) and received Personal Attendant (PA) services since August 27, 2017.
- 2) The Respondent notified the Appellant on May 22, 2018, that her services under the ADW program would be discontinued due to non-compliance with members responsibilities and unsafe environment (Exhibit D-2).
- 3) Since August 27, 2017, the Appellant was assigned to three case management agencies and three personal attendants due to member dissatisfaction.
- 4) From August 27, 2017 until April 1, 2018, the Appellant received services through [REDACTED]
- 5) The Appellant threw a cigarette roller in the general direction of the kitchen while three staff members from [REDACTED] were standing to the left of the kitchen doorway. The date of the incident is unknown.
- 6) Beginning April 1, 2018 through April 18, 2018, the Appellant received services through [REDACTED]. There were no records of problems reported with [REDACTED]
- 7) Beginning April 18, 2018 through June of 2018, The Appellant received services through [REDACTED]
- 8) On April 16, 2018, the PA [REDACTED] documented logs stated that he “was ate up with fleas” from the Appellant’s cat and that he would not be returning to her home to provide services (Exhibit D-3).
- 9) On April 17, 2018, the Appellant contacted the Agency via telephone requesting the PA transport her to get her pain medication.
- 10) On April 23, 2018, the Appellant contacted [REDACTED] via telephone and requested a daytime worker provide transportation for her to go to the bank, pay her electric bill, and pick up cat food.
- 11) On April 25, 2018, the Appellant contacted [REDACTED] again requesting transportation to “run errands” to the courthouse and to pay her electric bill at the bank.
- 12) The Appellant did not receive any workers for services on April 17, 2018 or April 23, 2018.
- 13) On April 25, 2018, it was documented that an Agency PA refused to take the Appellant on her errands because she smoked cigarettes.
- 14) The Appellant did not receive services from the Agency on April 25, 2018.

- 15) On April 25, 2018, when the Appellant contacted [REDACTED] via telephone, the Agency inquired if she needed help with bathing, dressing, grooming, and meal preparation. (Exhibit D-3).
- 16) In the Agency log dated April 25, 2018, it was indicated that the Appellant would call their office cussing and verbally abusing staff members.
- 17) On April 26, 2018, three Agency nurses visited the Appellant's home to review her Plan of Care (PAC) (Exhibit D-3).
- 18) Because the Agency failed to provide the Appellant's requested services on the April 26, 2018 visit, the Appellant became agitated and asked the reviewing nurses to leave her home and threatened to have them fired when the nurses questioned her about how she spent her money.
- 19) On April 27, 2018, the Agency notified the Appellant's physicians office requesting discontinuation of services for non-compliance and an unsafe environment.
- 20) The Appellant had no knowledge of the allegations of verbal abuse made by [REDACTED] staff prior to the hearing in this matter.

APPLICABLE POLICY

Bureau of Medical Services Provider Manual § 501.29 indicates that it is the Appellant's responsibility to comply with the agreed upon Person-Centered Service Plan and to maintain a safe home environment for all service providers.

Bureau of Medical Services Provider Manual § 501.34 states the following will result in a discontinuation of Aged and Disabled Waiver services and require a Request for Discontinuation of Services Form:

- A. No Personal Attendant services have been provided for 180 continuous days
- 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 (Aged and Disabled Waiver) 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.

- 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.

Additionally, Bureau of Medical Services Provider Manual §501.34 states that if it is an unsafe environment, services may be discontinued immediately upon approval of the Operating Agency, 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

The Respondent notified the Appellant by letter dated May 22, 2018, that her ADW program services were being discontinued due to non-compliance and an unsafe environment. RN Tamra Grueser, the Respondent's representative, testified that the department based its decision to terminate the Appellant's ADW program services on the documentation submitted in support of the request. RN Grueser testified that the report by [REDACTED] that because the Appellant threw her cigarette roller and based the information on the logs from April 17, 2018 to April 25, 2018 from [REDACTED] she determined that the Appellant's home was an unsafe environment. Accordingly, she made a request for discontinuation of services.

Per policy, an unsafe environment is defined as one wherein the personal attendants and/or other agency staff are threatened, or abused, and the staff's welfare is in jeopardy. Policy lists some examples of an unsafe environment – the client and or 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 dangerous weapons including menacing animals or verbal threats of harm; or display an abusive use of alcohol and/or drugs and/or illegal activities in the home. None of the evidence presented support the policy-definition of an unsafe environment nor was there any corroborating evidence to support any of these allegations.

The Appellant admitted that she became frustrated and threw her cigarette roller across the room. Admittedly, the Appellant did not demonstrate good judgment when she did; however, the evidence established that it was not thrown at or near any of the staff members present so that it posed a credible threat of bodily harm or injury to any person or would have put a reasonable person in fear of possible harm at that time.

On April 15, 2018, PA [REDACTED] reported that he “was ate up” with flea bites from the Appellant’s cat and that he would be leaving and not returning to the Appellant’s home. There was no corroborating evidence of PA [REDACTED] report of flea infestation at the Appellant’s home.

On April 23, 2018, the Appellant contacted [REDACTED] stating that she needed a daytime PA because she needed to go to the bank to pay her electric bill, to the courthouse to handle her business, and to get cat food. The Appellant did not receive workers for services on April 17, 2018 or April 23, 2018.

On April 25, 2018, the Appellant contacted [REDACTED] again asking if they were going to send a PA to her house on that day. The Appellant still needed transportation to run her errands. PA [REDACTED] log states that the Appellant did not want a PA after 4:00 pm because “everything is closed”. Another log was presented by the Respondent that PA [REDACTED] witnessed the telephone conversation between the Appellant and PA [REDACTED]. PA [REDACTED] stated that transportation for errands was not part of her Service Plan. It is unknown whether the requested services were a part of the Appellant’s Service Plan, as the Service Plan was not submitted as evidence in the hearing.

Additionally, the Respondent bases its proposed termination of services due to persistent non-compliance of member responsibilities. Policy § 501.29 states that it is the members responsibility to comply with the agreed upon Person-Centered Service Plan and to maintain a safe home environment for all service providers. However, there was no corroborating evidence presented to support this allegation.

The Respondent contended that the Appellant’s verbal abuse prevented PAs from performing duties as listed on the Service Plan. Documentation entered into evidence indicated that the Appellant would “call the Agency office cussing and verbally abusing staff members” but failed to provide a log of specific incidents. As such, the general allegation was given no weight in the Hearing Officer’s decision because the Service Plan was not entered into evidence, it is unknown what duties are included in the Appellant’s care.

The Appellant testified that the PAs assigned to her sit around all day on their cell phones, do not perform their duties to her satisfaction, or are unsanitary; therefore, she refused to allow them to care for her. The Appellant also testified that her PAs were not cleaning her home properly and that many times they would leave food on the dishes, and then would serve her with them. The Appellant alleged that she does not yell at her PAs, but that when she is upset her throat closes off and she must raise her voice in order to be heard. The Appellant denied non-compliance with her Service Plan, reiterating that her agencies have failed to provide her with quality PAs. The Appellant credibly testified that the Respondent failed to provide adequate staff to provide her with services she needed. The PAs or [REDACTED] staff did not appear for the hearing to refute the Appellant’s testimony.

The Respondent failed to demonstrate by a preponderance of evidence that there was an unsafe environment as defined by policy. [REDACTED] staff written log statements did not demonstrate any content that would indicate that fear of staff welfare was justified.


CONCLUSIONS OF LAW

- 1) Per policy, services under the Aged and Disabled Waiver program may be discontinued if there is a finding of an unsafe environment which puts the welfare of a personal attendant and/or agency staff in jeopardy.
- 2) Evidence does not support policy guidelines for unsafe environment requiring demonstration that Agency staff were threatened or abused and that staff's welfare was in jeopardy.
- 3) The Respondent did not show by a preponderance of evidence that the Appellant was persistently non-compliant with the member responsibilities.
- 4) The Respondent incorrectly terminated the Appellant's participation in the Aged and Disabled Waiver program based on non-compliance and unsafe environment.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to terminate the Appellant's participation in the Aged and Disabled Waiver program based on non-compliance and unsafe environment.

ENTERED this 6th day of 2018.



Danielle C. Jarrett
State Hearing Officer