



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

Bill J. Crouch
Cabinet Secretary

M. Katherine Lawson
Inspector General

August 24, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-1980

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

cc: Tammy Grueser, BoSS

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

██████████,

Appellant,

v.

Action Number: 18-BOR-1980

**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 August 22, 2018, on an appeal filed July 11, 2018.

The matter before the Hearing Officer arises from the June 25, 2018 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on lack of services for 180 days.

At the hearing, the Respondent appeared by Tammy Grueser, RN, 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 Aged & Disabled Waiver Services Policy Manual Section 501.34
- D-2 Termination notice dated June 25, 2018 and Request for Discontinuation of Service dated June 21, 2018
- D-3 Health PAS-Administrator Member information

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 June 25, 2018, the Respondent issued notice (D-2) to the Appellant, informing her of its decision to discontinue services under the Aged/Disabled Waiver (ADW) Medicaid Program because no personal attendant services had been provided for 180 days.

- 2) The Respondent was last billed for personal attendant services from a case management agency ([REDACTED]) on November 3, 2017 (D-3).
- 3) The Appellant opted to receive Aged/Disabled Waiver benefits using the Personal Options Model, which required her to secure and hire a personal attendant of her choice.
- 4) The Respondent only received billing from [REDACTED] – for the Appellant’s rehabilitation therapy – for the period of November 15, 2017 through June 20, 2018.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that a Discontinuation of Services Form is required when no personal attendant services have been provided for 180 continuous days – example, an extended placement in a long-term care or rehabilitation facility.

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.11.2 states that the Financial Management Service (FMS) Model available to persons to support their use of participant-directed services is *Personal Options*. Under *Personal Options*, the person is the Common Law Employer of the personal attendants they hire directly. The person may appoint a representative to assist with these functions, but the person remains the Common Law Employer.

The Common Law Employer is responsible to:

- Elect the participant-directed option.
- Work with their Resource Consultant (RC) to become oriented and enrolled in the Participant-Directed Option, enroll personal attendants, develop a spending plan for the participant-directed budget, and create an emergency personal attendant back-up plan to ensure staffing, as needed.
- Recruit and hire their personal attendant(s).
- Provide required and person-specific training to personal attendant(s).
- Determine personal attendants’ work schedule and how and when the personal attendant should perform the required tasks.
- Supervise personal attendants’ daily activities.
- Evaluate their personal attendant’s performance.
- Review, sign, and submit personal attendants’ time sheets to the *Personal Options* Fiscal/Employer Agent.
- Maintain documentation in a secure location and ensure employee confidentiality.
- Discharge their personal attendant, when necessary.
- Notify their Case Manager and/or Resource Consultant of any changes in service need.
- Maintain a safe environment for all employees

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be immediately discontinued when no personal attendant services have been provided for 180 continuous days.

As an Aged/Disabled Waiver Medicaid member who had opted to receive services through the Personal Options model, the Appellant was responsible for securing and hiring a personal attendant of her choosing. The Appellant testified during the hearing that her attempts to secure a personal attendant were unsuccessful. She indicated that a neighbor assisted her on a part-time basis during the time she had no personal attendant, and that she personally paid the neighbor for the services. The neighbor did not wish to become a Department-approved care provider because she believed it would affect her retirement income.

The Respondent's witness testified that the Appellant's neighbor had not been approved as a care provider. Therefore, the assistance could not be considered as personal attendant service.

As the Appellant received no personal attendant service for 180 continuous days, the Respondent acted correctly in discontinuing her Aged/Disabled Waiver Medicaid benefits.

CONCLUSION OF LAW

The Respondent acted correctly in discontinuing the Appellant's services under the Aged/Disabled Waiver Medicaid Program.

DECISION

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

ENTERED this 24th Day of August 2018.

**Pamela L. Hinzman
State Hearing Officer**