



**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**

**Jolynn Marra
Interim Inspector General**

September 26, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2176

Dear Mr. [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

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2176

**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 25, 2018, on an appeal filed August 7, 2018.

The matter before the Hearing Officer arises from the July 27, 2018 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance with program policy and providing an unsafe work environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, West Virginia Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Case Manager, ██████████; ██████████; ██████████, RN, ██████████; ██████████, Personal Attendant, ██████████; and ██████████, Staffing Coordinator/Office Manager, ██████████. 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 Manual Policy Sections 517.16 and 517.19
- D-2 Request for Discontinuation of Service dated July 6, 2018, Aged and Disabled Waiver Logs and West Virginia Incident Management System information
- D-3 Electronic Mail Transmission dated July 2, 2018
- D-4 Documentation from ██████████ (Aged and Disabled Waiver Logs, RN Contact Forms, and Aged and Disabled Waiver-Person Centered Assessment dated March 12, 2018)
- D-5 Documentation from ██████████ (Aged and Disabled Waiver Logs, signed statements of ██████████ and ██████████, and incident information)
- D-6 Aged and Disabled Waiver-Person Centered Assessment dated March 14, 2017

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 July 27, 2018, the Respondent issued notice to the Appellant, informing him of its decision to discontinue services under the Aged/Disabled Waiver (ADW) Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) The Aged/Disabled Waiver benefits were discontinued after personal care attendants employed with ██████████ reported that the Appellant had exhibited inappropriate sexual behavior in their presence.
- 3) Personal Care Attendant ██████████, who worked with the Appellant from October 2017-June 2018, provided a written statement (D-5) alleging that the Appellant talked about women's breasts in her presence and "offered me money to jack him off." The statement indicated that the Appellant asked Ms. ██████████ how much she would charge to perform sexual favors, and asked if she had friends who would be willing to perform sex acts. Ms. ██████████ said that she refused the Appellant's request and told him that she did not know any prostitutes.
- 4) Personal Care Attendant ██████████ worked with the Appellant from May 2017-October 2017. Ms. ██████████ testified that the Appellant told her that his previous personal attendant always needed money and that he paid the former worker to lift her shirt. Ms. ██████████ also alleged that the Appellant showed her nude photographs of himself and his wife, and made comments about the breasts of women on television. Ms. ██████████ said the Appellant never propositioned her sexually (D-5).
- 5) An Aged and Disabled Waiver Log (D-4) dated June 21, 2016 states that the Appellant owned a pacifier shaped like a woman's breasts and suckled the pacifier in his personal attendant's presence. The attendant also reported that he had shown her his gun and handcuffs.
- 6) Aged and Disabled Waiver Logs (D-2 and D-4) state that the Appellant made sexual comments toward Personal Attendant ██████████ and offered her \$200 to perform oral sex on him. Ms. ██████████ indicated that the Appellant pulled out and fondled his penis in her presence.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 states that 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. ADW services may be discontinued immediately if the situation results in an unsafe environment for care providers.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be immediately discontinued when an individual provides an unsafe environment for care providers working in the home.

While the Appellant admittedly used a breast-shaped pacifier in his personal care attendant's presence, he indicated that the pacifier was a gag gift given to him by a former co-worker and he intended his actions to be a joke. He denied propositioning or exposing his genitals to personal attendants, and denied showing a personal attendant nude photographs.

As the case management agency received numerous reports of inappropriate sexual behavior over the course of several months - and had legitimate concerns about the safety of its employees in the Appellant's home - the Respondent acted correctly in discontinuing the Appellant's Aged/Disabled Waiver Services.

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 action to discontinue the Appellant's services through the Aged/Disabled Waiver Medicaid Program.

ENTERED this 26th Day of September 2018.

**Pamela L. Hinzman
State Hearing Officer**