



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

October 30, 2018



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2335

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: 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-2335

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 October 24, 2018, on an appeal filed September 7, 2018.

The matter before the Hearing Officer arises from the July 23, 2018 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on the Appellant's request.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, Case Manager, Central West Virginia Aging 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 Manual Policy Section 501.9

D-2 Request for Discontinuation of Service dated July 18, 2018, letter signed by ██████████ and ██████████ dated July 18, 2018, Central West Virginia Aging Services Service Recording Log dated July 18, 2018, Behavioral Contract-Verbal Abuse and Non-Compliant Behavior, and termination notice dated July 23, 2018

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 23, 2018, the Respondent issued notice to the Appellant, informing him of its decision to terminate benefits under the Aged/Disabled Waiver (ADW) Medicaid Program because he no longer desired services.
- 2) Documentation in a Central West Virginia Aging Services (CWVAS) Service Recording Log (D-2) indicates that the Appellant requested that his case be closed during a home visit from CWVAS Case Manager [REDACTED] and [REDACTED], RN, on July 18, 2018. The case closure was allegedly requested after the Appellant stated that he needed no assistance with personal care and refused to sign a Behavioral Contract regarding verbal abuse and non-compliance issues.
- 3) CWVAS submitted a Request for Discontinuation of Services form (D-2) to the Respondent on July 18, 2018. The request included documentation signed by the case manager and nurse indicating that the Appellant no longer desired services.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 states that the following require a Request for Discontinuation of Services Form:

A. No Personal Attendant services have been provided for 180 continuous days – example, an extended placement in long-term care or rehabilitation facility.

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 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. This information can be found at: <http://www.dhhr.wv.gov/bms/Programs/WaiverPrograms/ADWProgram/Pages/ADW-Manuals-and-Forms.aspx>

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.

The Request for Discontinuation of Services Form must be uploaded into the UMC's web portal and a notification is sent to the OA that it has been uploaded. The OA will review all requests for a discontinuation of services. If it is an appropriate request, and the OA approves the discontinuation, the OA will send notification of discontinuation of services to the person (or legal representative) with a copy to the Case Management Agency or FE/A). Fair hearing rights will also be provided except if the person (or legal representative) no longer desires services. The effective date for the discontinuation of services is thirteen calendar days after the date of the OA notification letter, if the person (or legal representative) does not request a hearing.

DISCUSSION

Policy states that Aged/Disabled Waiver benefits can be discontinued when a person no longer desires services.

During the hearing, the Appellant testified that he does not need personal attendants to assist him with bathing and grooming. He stated that he mainly requires an attendant to clean his house and cook meals because he is blind. Ms. [REDACTED] testified that she informed the Appellant during the July 18, 2018 home visit that his unwillingness to accept assistance with personal care could put his Aged/Disabled Waiver services in jeopardy, but the Appellant indicated that he did not care and "to go ahead and close his case then." Ms. [REDACTED] stated that the Appellant refused to sign a Behavioral Contract during the home visit, a portion of which concerned the need to follow his Plan of Care. The Appellant testified that he did not want his case to be closed, and did not recall requesting case closure on the date of the home visit. He admitted, however, that he had refused to sign the Behavioral Contract.

While there may be non-compliance or medical eligibility issues to be addressed concerning the Appellant's benefits, the Appellant was notified that his Aged/Disabled Waiver benefits were being terminated solely based on his own request for case closure. The Appellant testified during the hearing that he did not want his case to be closed, and that he wishes to continue receiving Aged/Disabled Waiver services. Based on his unwillingness to sign a behavioral contract, it is reasonable to believe that the Appellant may have become agitated during the home visit, and there is no documentation to specify whether the Appellant suffers from medical conditions that could impair his behavior or judgment.

As the Appellant testified that he does not recall requesting case closure and wishes to continue receiving Aged/Disabled Waiver services, the Respondent's decision to terminate benefits cannot be affirmed.

CONCLUSION OF LAW

The Respondent's decision to terminate the Appellant's Aged/Disabled Waiver Medicaid benefits cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate services through the Aged/Disabled Waiver Medicaid Program based on the Appellant's request.

ENTERED this 30th Day of October 2018.

**Pamela L. Hinzman
State Hearing Officer**