



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

November 14, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:18-BOR-2524

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Bureau of Senior Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

██████████,

Appellant,

v.

Action Number: 18-BOR-2524

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 November 7, 2018.

The matter before the Hearing Officer arises from the September 26, 2018, decision by the Respondent to discontinue the Appellant's services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Case Manager; ██████████, RN; ██████████, Homemaker; and ██████████, Director with the ██████████ County Commission on Aging. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual §§501.34 and 501.29
- D-2 Notice of Discontinuation of Services dated September 26, 2018
- D-3 Aged and Disabled Waiver Participant Log for July 2017 and July 2018 and Incident Report dated July 26, 2018
- D-4 Aged and Disabled Waiver Participant Log for July 2018
- D-5 Behavioral Contract signed July 31, 2017
- D-6 Correspondence from ██████████ County Commission on Aging to Dr. ██████████ dated July 17, 2018

D-7 Correspondence from [REDACTED] County Commission on Aging to the Bureau of Senior Services dated July 16, 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) The Appellant received services through the Aged and Disabled Waiver Program.
- 2) On July 12, 2018, the Appellant's homemaker, [REDACTED], provided services to the Appellant in her home.
- 3) The Appellant asked Ms. [REDACTED] to take her to the store near the end of Ms. [REDACTED] shift (Exhibits D-3 and D-4).
- 4) Ms. [REDACTED] advised the Appellant that she did not have sufficient time left in her shift to take the Appellant to the store (Exhibits D-3 and D-4).
- 5) Ms. [REDACTED] reported that the Appellant became angry with her and brandished a handgun towards her in a threatening manner (Exhibits D-3 and D-4).
- 6) The Appellant's case management agency reported the incident to the police and requested a discontinuation of services (Exhibits D-3 and D-6).
- 7) The Appellant was notified on September 26, 2018 that her Aged and Disabled Waiver services were discontinued due to an unsafe environment (Exhibit D-2).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.29 states that Aged and Disabled Waiver recipients' responsibilities include maintaining a safe home environment for all service providers.

Bureau for Medical Services Provider Manual §501.34 states that services can be discontinued when a member's home environment is one in which a 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 person receiving Aged and Disabled Waiver services or other household members 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 or verbal threats to harm the personal attendant and/or other agency staff. If it is an unsafe environment, services may be discontinued immediately upon approval.

DISCUSSION

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

The Appellant's homemaker provided testimony that the Appellant had been verbally abusive to her for months prior to the July 2018 incident, but she was not fearful of the Appellant until she brandished a firearm towards her.

The Appellant admitted that she kept a firearm in her home, but denied that she threatened Ms. [REDACTED] with the weapon or was verbally abusive. The Appellant stated she has since sold her firearm.

The preponderance of the evidence and testimony provided established that the Appellant threatened her homemaker with a firearm, therefore providing an unsafe environment to continue receiving services in her home.

The Respondent acted in accordance with policy in the discontinuation of the Appellant's Aged and Disabled Waiver services due to an unsafe environment.

CONCLUSIONS OF LAW

- 1) Policy allows for the discontinuation of Aged and Disabled Waiver services if a member is found to have an unsafe home environment in which care providers are threatened or harmed.
- 2) The Appellant threatened her homemaker in July 2018 with a firearm.
- 3) The Appellant provided an unsafe home environment for agency staff, and therefore, Aged and Disabled Waiver services were correctly discontinued.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Department to discontinue the Appellant's Aged and Disabled Waiver services.

ENTERED this 14th day of November 2018

**Kristi Logan
State Hearing Officer**