



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

January 17, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2726

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS
[REDACTED]

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

████████████████████,
Appellant,

v.

Action Number: 17-BOR-2726

**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 January 9, 2018, on a timely appeal filed November 26, 2017.

The matter before the Hearing Officer arises from the Respondent's decision to terminate the Appellant's Aged and Disabled Waiver Program (ADW Program) benefits as noticed in the letter dated October 18, 2017.

At the hearing the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services (BoSS). Appearing as witnesses for the Respondent were Susan Layne, Personal Options Program Director, and Catherine Richardson, Transfer Coordinator for BoSS. The Appellant appeared *pro se*. Appearing as witness for the Appellant was her son, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services, Aged and Disabled Home and Community Based Waiver Policy Manual §501.34
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service dated October 2, 2017
- D-3 Tx Result Report confirmation of Notice of Discontinuation of Services sent to the Appellant dated October 18, 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) The Appellant had been a participant in the Aged and Disabled Waiver Program (ADW program) under Personal Options model.
- 2) On April 3, 2017, the Appellant was admitted to the hospital and then transferred to a facility for rehabilitation where she suffered two broken legs, prolonging her rehabilitation stay.
- 3) The Appellant was discharged from the rehabilitation facility on October 15, 2017.
- 4) On October 2, 2017, a request was made by the Resource Consultant for the Personal Options Program, Annette Gossell, to terminate the Appellant's ADW program services based upon no personal attendant services being provided for 180 days. The request noted that no services had been rendered to the Appellant since April 3, 2017. (Exhibit D-2)
- 5) On October 18, 2017, the Respondent sent notification to the Appellant that her ADW program benefits were being discontinued because no personal attendant services had been provided for 180 days. (Exhibit D-3)
- 6) The Respondent terminated the Appellant's ADW program benefits.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual (ADW policy) §501.11, DESCRIPTION OF SERVICE OPTIONS, sets forth the two service options that are offered in the ADW and are available to every person eligible for the ADW: Traditional Service Option and Participant-Directed Service Option (Personal Options Financial Management Service).

ADW policy §501.11.2, PARTICIPANT-DIRECTED SERVICE OPTION, PERSONAL OPTIONS MODEL, explains that under Personal Options FMS option, the person is the Common Law Employer of the Personal Attendants they hire directly. 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

A Request for Discontinuation of Services Form may be submitted when no Personal Attendant services have been provided for 180 continuous days – example, an extended placement in long-term care or rehabilitation facility. The Request for Discontinuation of Services Form must be uploaded into the UMC’s web portal and a notification is sent to the Operating Agency (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. (ADW policy §501.34)

ADW policy §501.32 allows a person receiving ADW services to request a transfer to another agency or to Personal Options and vice versa at any time. If a person wishes to transfer to a different agency, a Request to Transfer form must be completed and signed by the person or legal representative. The form may be obtained from the current provider, the new providers, the OA or other interested parties. Once completed and signed by the person, the form must be uploaded into the UMC’s web portal and the OA must be notified that it was uploaded. The OA will then coordinate the transfer and set the effective date based on when required transfer documents are received. For Case Management transfers, the effective date of transfer will be the first date of the next month if the transfer is received by the 17th of the month.

DISCUSSION

The Respondent notified the Appellant by letter dated October 18, 2017, that her ADW Program services were being discontinued because “no Personal Attendant services have been provided for 180 days.” The Respondent determined that the Appellant had not accessed personal attendant services since April 3, 2017, and therefore, because there were over 180 days without billable services, that discharge was appropriate.

The Appellant does not contest the fact that she has not received any personal attendant services for over 180 days. The Appellant asserted that she needs the personal attendant services provided by the ADW program. The Appellant testified that on April 3, 2017, she was admitted to the hospital and then discharged for rehabilitation to another facility. Unfortunately, while receiving rehabilitation at the facility, she suffered two broken legs which required her to remain in the rehabilitation facility until October 15, 2017. Upon discharge to home, the Appellant did not receive any personal attendant or other services. Although the Appellant refutes the Respondent’s assertions that she did not attempt to contact her resource consultant so that her services would remain in place, the fact remains that she failed to access any personal attendant services for over 180 days. Per policy, the Respondent may terminate ADW Program benefits after notification to the program participant. The Appellant was notified by letter dated October 18, 2017. The effective date for the termination of ADW Program services is

thirteen calendar days after the date of the OA notification letter, which would have been October 31, 2017.

Of note, the Appellant asserted that she signed paperwork with an agency called [REDACTED] to transfer to the Traditional Options model sometime at the end of October. There was no corroborating evidence presented regarding the date upon which she completed and signed the paperwork for the transfer. The Respondent's witness, Catherine Richardson, Transfer Coordinator, testified that a request for transfer from the Appellant has not been received.

CONCLUSIONS OF LAW

1. Per policy, ADW program benefits may be discontinued if a program member does not access personal attendant services for 180 days.
2. The Appellant had not accessed personal attendant services for over 180 days.
3. The Appellant sent the Appellant notice of the proposed discontinuation of ADW program services on October 18, 2017.
4. Notice of the proposed discontinuation of ADW program services must be sent to a member 13-days prior to the proposed action.
5. The Respondent correctly discontinued the Appellant's ADW Program benefits.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's termination of the Appellant's services through the Medicaid Aged/Disabled Title XIX (HCB) Waiver Services Program.

ENTERED this 17th day of January 2018

Lori Woodward, State Hearing Officer