



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

Bill J. Crouch  
Cabinet Secretary

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

M. Katherine Lawson  
Inspector General

February 15, 2018

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-2901

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: Tamra Grueser, Bureau for Senior Services

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
BOARD OF REVIEW

[REDACTED],

Appellant,

v.

Action Number: 17-BOR-2901

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 [REDACTED]. 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 February 7, 2018, on an appeal filed December 1, 2017.

The matter before the Hearing Officer arises from the October 17, 2017, 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, Bureau for Senior Services. Appearing as witnesses for the Respondent were [REDACTED], Social Worker with [REDACTED]; [REDACTED], Staffing Coordinator with [REDACTED]; and [REDACTED], RN Supervisor with [REDACTED]. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was [REDACTED], her mother. 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
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service dated October 11, 2017
- D-3 West Virginia Incident Management Reports dated September 23, 2016, July 4, 2016 and October 6, 2017; Member Complaints dated July 25, 2017, October 3, 2017, October 4, 2017 and October 10, 2017; and Behavioral Contract signed October 3, 2017

- D-4 Statement from [REDACTED] dated October 5, 2017, Statement from [REDACTED] dated October 6, 2017 and Notes from [REDACTED]
- D-5 [REDACTED] Police Department Incident/Offense Report dated October 3, 2017, and Criminal Complaints before the Magistrate County of [REDACTED] County, West Virginia

**Appellant's Exhibits:**

- A-1 Medicare II Complaint Intake Form dated October 4, 2017
- A-2 Statement from [REDACTED]
- A-3 WorkForce West Virginia Board of Review decision dated December 11, 2017
- A-4 Employee Warning Notice from [REDACTED] dated October 5, 2017, and Paystubs from [REDACTED]
- A-5 Statement from [REDACTED], Statement from [REDACTED], and Letter from [REDACTED]
- A-6 Correspondence from Child Protective Services and Adult Protective Services
- A-7 Aged and Disabled Waiver Program Member Request to Transfer and Personal Care Member Request to Transfer signed October 2, 2017
- A-8 Complainant's Request for Dismissal of Criminal Complaint Filed in Magistrate court dated January 10, 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 was a recipient of services under the Aged and Disabled Waiver Program.
- 2) In July 2017, the Appellant was admitted to the hospital. The Appellant tested positive for illegal drugs (Exhibit D-3).
- 3) The Appellant admitted to abusing illegal drugs with her then-boyfriend and personal attendant, [REDACTED]
- 4) Upon her discharge from the hospital in July 2017, the Appellant moved in with her mother [REDACTED], and her relationship with [REDACTED] and his employment as her personal assistant ended shortly thereafter.
- 5) On October 3, 2017, the Appellant signed a behavior contract with her case management agency agreeing to keep a drug-free home environment (Exhibit D-3).
- 6) The Appellant requested to transfer case management agencies on or around October 2, 2017 (Exhibit A-7).

- 7) The transfer request was denied due to the behavioral contract in effect with the Appellant's current case management agency, [REDACTED] (Exhibit A-7).
- 8) On October 3, 2017, the Appellant filed a police report with the [REDACTED] Police Department alleging that her van had been stolen (Exhibit D-5).
- 9) Officer Sergeant [REDACTED] of the [REDACTED] Police Department investigated the incident and received a confession from the Appellant and her brother that the van was not stolen, but had been traded for methamphetamine (Exhibit D-5).
- 10) Sergeant [REDACTED] documented in the complaint that the Appellant filed the false police report when it was determined that the substance she traded her van for was not methamphetamine, but believed to be rock salt (Exhibit D-5).
- 11) The Appellant's case management agency was notified of the incident, and requested a discontinuation of services on October 11, 2017 (Exhibit D-2).
- 12) The Appellant was notified by letter on October 17, 2017, that her services under the Aged and Disabled Waiver Program were being discontinued due to an unsafe environment.

### **APPLICABLE POLICY**

Bureau for Medical Services Provider Manual §501.34 states Aged and Disabled Waiver (ADW) services may be discontinued if an unsafe environment exists. 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:

- 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.
- The person or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
- The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures.

### **DISCUSSION**

Aged and Disabled Waiver services may be discontinued if an individual provides an unsafe environment for direct care staff, including drug abuse or the presence illegal activities.

The Respondent approved the case management agency's request for a discontinuation of services for the Appellant due to drug abuse by the Appellant and illegal drug activity.

The Appellant admitted to formerly abusing drugs when she was in a relationship with her former boyfriend [REDACTED] but since their separation, maintains that she is drug free. The Appellant denied trading her van in exchange for drugs, testifying that the charges brought against her were dismissed.

The Appellant's mother alleged that [REDACTED] forced the Appellant to sign the behavior contract on October 3, 2017, after she requested to transfer agencies so that the transfer would be denied. The Appellant's mother also alleged that [REDACTED] consistently failed to provide the Appellant with personal attendants, ignored her complaints regarding [REDACTED] and suspected drug abuse and accused [REDACTED] of her unjust termination from employment as a personal care attendant with that agency.

Although the Appellant contended that she no longer abuses illegal drugs and denied the alleged incident regarding her van, the Appellant admitted to law enforcement that she fabricated the story about the stolen van and to her participation in a drug deal gone bad. This incident, coupled with her history of drug abuse, establishes that the Appellant is unable to provide a safe environment for the staff providing her care.

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

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, Aged and Disabled Waiver services may be terminated when the member subjects direct care staff to an unsafe environment.
- 2) Through a preponderance of credible evidence, the Respondent proved that Appellant participated in illegal drug activity in her home.
- 3) The Respondent correctly discontinued the Appellant's Aged and Disabled Waiver services due to an unsafe environment.

### **DECISION**

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

**ENTERED this 15<sup>th</sup> day of February 2018**

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**Kristi Logan  
State Hearing Officer**