



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
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Jolynn Marra
Interim Inspector General

April 17, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:20-BOR-1182

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,

Danielle C. Jarrett
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

████████████████████,

Appellant,

v.

Action Number: 20-BOR-1182

**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 April 8, 2020, on an appeal filed February 5, 2020.

The matter before the Hearing Officer arises from the January 29, 2020 decision by the Respondent to discontinue the Appellant's services received under the Medicaid Aged and Disabled Waiver (ADW) Program based on lack of services for 180 continuous days.

At the hearing, the Respondent appeared by Tamra Grueser, RN, with the Bureau of Senior Services (BoSS). Appearing as witnesses for the Respondent were ██████████, Office Supervisor with ██████████; and ██████████, Case Manager with ██████████. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Department of Health and Human Resources (WVDHHR) Bureau of Medical Services (BMS) Aged & Disabled Waiver Services Policy Manual § 501.34
- D-2 ADW Request for Discontinuation of Service, dated January 2, 2020; Notice of Decision, dated January 29, 2020; and Member Snapshot screenshot printout of Eligibility Status History, dated January 27, 2020
- D-3 WVDHHR BMS Request for Hearing, dated February 4, 2020
- D-4 ADW Service Plan, dated April 2016
- D-5 Screenshot printouts of Billing History, dated February 17, 2016 through February 11, 2020

Appellant's Exhibits:

NONE

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 participant in the Aged and Disabled Waiver (ADW) Program and received Personal Attendant (PA) services.
- 2) The Appellant received services through [REDACTED]. (Exhibit D-2)
- 3) The Appellant opted to receive ADW benefits using the Personal Options Model, which required him to secure and hire a PA of his choice. (Exhibit D-4)
- 4) The Appellant has not utilized PA services in excess of 180 days. (Exhibit D-5)
- 5) On January 2, 2020, [REDACTED] filed a request for discontinuation of the Appellant's ADW services due to no provision of services for 180 continuous days (last date of service April 2016). (Exhibit D-2)
- 6) On January 29, 2020, notification was issued to the Appellant that his ADW services were discontinued due to failure to utilize PA services for 180 days in accordance with the ADW Program Policy Manual § 501.34. (Exhibit D-2)

APPLICABLE POLICY

BMS Provider Manual §501.34 – Discontinuation of Services – reads, in part, the following require a Request for Discontinuation of Services Form:

- 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 Utilization Management Contractor (UMC) web portal and a notification is sent to the Operating Agency (OA) that it has been uploaded. The OA reviews all request 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. 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

The Appellant was a participant in the ADW Program and received PA services. Per policy, a discontinuation of ADW services is permitted if no PA services have been provided to the Appellant for 180 continuous days prior to the termination notice. On January 29, 2020, the Respondent issued a notice advising the Appellant that his ADW services would be terminated because PA services had not been provided for 180 continuous days. The Respondent must prove by a preponderance of evidence that the Appellant has not received personal attendant services in 180 continuous days.

The Respondent contended that the Appellant last received PA services since March or April of 2016. The Respondent testified the Appellant has been eligible for PA services since 2011, but had not utilized PA services since April 2016. The Respondent indicated that if PA services are not utilized, after 180 continuous days, the Appellant's ADW services are discontinued. The Respondent submitted documentation of the Appellant's billing history from February 17, 2016 through February 11, 2020. Conflicting evidence made it impossible to determine the actual date the Appellant last utilized PA services, but all parties agreed that PA services had not been utilized in excess of 180 days.

The Appellant explained that because he is from [REDACTED], he is leery of others. He added that he needs ADW services because his health fluctuates and asserted that he needs the PA services provided by the ADW Program. The Appellant disclosed that he was diagnosed with the Human Immunodeficiency Virus (HIV) over 35 years ago. The Appellant elaborated that when he moved to West Virginia, 20 years ago he was hospitalized and diagnosed with full-blown Acquired Immune Deficiency Syndrome (AIDS). The Appellant explained that because he is uncomfortable with a female assisting him with showering and other personal hygiene needs, he prefers a male PA. He also indicated that because of the seriousness of his health conditions he also prefers the PA to be a non-smoker and non-drinker.

The Respondent's witness, [REDACTED] (Ms. [REDACTED]), explained that she has been the Appellant's Case Manager with [REDACTED] since 2011. Ms. [REDACTED] testified that she is required to conduct a home visit with the Appellant every six (6) months and the months that she did not conduct a home visit, she called him via telephone. Ms. [REDACTED] indicated that while visiting the Appellant they discussed the amount of PA service hours that he was allotted monthly. Ms. [REDACTED] elaborated that the Appellant understood that he needed to have PA services monthly, however he was adamant that he preferred an adult male because he is more comfortable with a male and that an older PA would be more responsible. Ms. [REDACTED] disclosed that in 2016, she discussed the possibility of discontinuation of the Appellant's ADW services if he did not utilize PA services. Ms. [REDACTED] indicated that is when the Appellant agreed to utilize female PAs. The Appellant testified that in 2016, because no males were available, he utilized the services of two (2) female PAs, but they quit providing him services and he did not have a clear understanding on why they did not return.

The Appellant testified that [REDACTED] ([REDACTED]) has been unable to meet his preferences in a PA.

It is noted that the agency did not request discontinuation of ADW services until prompted to do so by BoSS in January 2020. It is unclear why [REDACTED] did not request a discontinuation sometime in 2016 but waited nearly four (4) years to do so. Sometime after the request was submitted to BoSS, Ms. [REDACTED] reached out to the Appellant and advised him that his services were going to be discontinued. At that time, the Appellant agreed to accept a different PA in order to maintain his ADW services. However, the closure notice was issued prior to the placement of a new PA and implementation of any services.

As an ADW member who had opted to receive services through the Personal Options Model, the Appellant was responsible for securing and hiring a PA of his choosing. The Respondent indicated the Appellant could have requested a transfer in his homemaker agency due to [REDACTED] not having male PAs. The Appellant testified that he did not wish to transfer agencies because of the good relationship he has with his Case Manager.

During the hearing, the Appellant requested leniency and was now willing to transfer to Council of Aging as they were able to provide him with a PA who met with his preferences for assistance. Although, this Hearing Officer understands the Appellant's desire to receive services, the Board of Review must follow policy and the Appellant's request for leniency is not within the authority of the Board of Review.

CONCLUSIONS OF LAW

- 1) The Respondent proved by a preponderance of evidence that the Appellant has not received personal attendant services for 180 continuous days.
- 2) Because the Appellant has not received personal attendant services for 180 continuous days, policy requires the discontinuation of the Appellant's ADW services.
- 3) The Respondent acted in accordance with policy in the discontinuation of the Appellant's Aged and Disabled Waiver services.

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 _____ day of April 2020.

Danielle C. Jarrett
State Hearing Officer