



**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**

January 9, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-2715

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Claimant'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: 19-BOR-2715

**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 8, 2020, on an appeal filed November 13, 2019.

The matter before the Hearing Officer arises from the November 1, 2019 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on an unsafe environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, RN, Supervisor of In-Home Services, ██████████, and ██████████, Executive Director, ██████████. 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 Sections 501.34
- D-2 Request for Discontinuation of Service dated August 29, 2019 and supporting documentation
- D-3 ADW termination notice dated November 1, 2019
- D-4 Incident Report (incident date- August 27, 2019)

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 November 1, 2019, the Respondent issued notice (D-3) to the Appellant, informing her of its decision to discontinue services under the Aged/Disabled Waiver (ADW) Medicaid Program due to an unsafe environment.
- 2) Aged/Disabled Waiver benefits were discontinued after a personal attendant assigned to the Appellant's care alleged in August 2019 that the Appellant's son/next-door neighbor shot at her from inside his own residence multiple times as she walked back to the Appellant's home after retrieving a newspaper.
- 3) The personal attendant's allegations are documented in Exhibits D-2 and D-4.
- 4) The personal attendant notified law enforcement of the incident, but filed no charges against the Appellant's son.
- 5) An Incident Report (D-4) indicates that the matter was not reported to Adult Protective Services.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that 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.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be discontinued when the person receiving ADW services or other household members threaten a personal attendant or other agency staff with guns, knives, or other potentially dangerous weapons.

The Respondent contends that the Appellant's son shot at an ADW personal care attendant in August 2019; however, the personal attendant was not present at the hearing for questioning or to provide more specific information about what she witnessed on the incident date. The personal attendant did not press charges against the Appellant's son and no report was made to Adult Protective Services indicating that the Appellant was endangered by her son's presence. In addition, no police report was presented as evidence.

The Respondent's documentation indicates that the Appellant was aware that her son had fired a shot on the day in question, but the Appellant testified during the hearing that she did not hear gunshots. She stated that she had contacted the police on that date to request that her son's girlfriend be removed from his home because the couple was constantly fighting. Conflicting testimony was provided concerning whether or not the Appellant and her son share a driveway space.

The Appellant's son was not present to testify during the hearing and there is no documentation to indicate that he was questioned by police or homemaker agency staff.

Policy specifically states that ADW services can be discontinued when **the client or other household members** *[emphasis added]* threaten personal attendants with potentially dangerous weapons. The Appellant's son does not reside in her household and was not in the Appellant's home when he allegedly fired shots. The Appellant and her household members were not directly involved in the incident and cannot be held responsible for another individual's actions outside of her household.

While the incident report is concerning and the matter may require law enforcement monitoring and/or intervention, the incident did not involve the Appellant or anyone residing in her household. Therefore, evidence does not support the presence of an unsafe environment within the Appellant's household.

CONCLUSION OF LAW

The Respondent's action to discontinue the Appellant's services under the Aged/Disabled Waiver Medicaid Program cannot be affirmed.

DECISION

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

ENTERED this 9th Day of January 2020.

**Pamela L. Hinzman
State Hearing Officer**