



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

February 4, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.:19-BOR-2733

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,

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: 19-BOR-2733

**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 21, 2020, on an appeal filed November 19, 2019.

The matter before the Hearing Officer arises from the November 12, 2019 decision by the Respondent to discontinue the Appellant's services received under the Medicaid Aged and Disabled Waiver (ADW) Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN, with the Bureau of Senior Services (BoSS). Appearing as witnesses for the Respondent were ██████████, Case Manager with ██████████; and ██████████, Homecare RN for ██████████. 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 § 501.29
- D-2 ADW Request for Discontinuation of Service, dated October 30, 2019; and Notice of Discontinuation, dated November 12, 2019
- D-3 Service Recipient Rights and Responsibilities Form, dated October 17, 2019
- D-4 Notice of ADW Transfer, dated August 26, 2019; ADW Participant Request to Transfer, dated July 15, 2019; ADW Personal Attendant Agency Selection Form, dated July 15, 2019; Notice of ADW Transfer, dated July 15, 2019; ADW Participant Request to Transfer, dated July 15, 2019; ADW Personal Attendant Agency Selection Form, dated July 15, 2019; Notice of ADW Transfer, dated June

- 5, 2019; ADW Personal Attendant Agency Selection Form, dated June 4, 2019; ADW Participant Request to Transfer, dated June 4, 2019; Notice of ADW Transfer, November 14, 2018; ADW Member Request to Transfer, dated November 21, 2018; ADW Case Management Agency Selection Form, dated November 9, 2018; ADW Personal Attendant Agency Selection Form, dated November 14, 2018; Notice of ADW Transfer, dated April 23, 2018; ADW Member Request to Transfer, dated April 10, 2018; ADW Personal Attendant Agency Selection Form, dated April 13, 2018; ADW Case Management Agency Selection Form, dated April 13, 2018; and KEPRO Member Snapshot
- D-5 ADW Service Plan, dated October 17, 2019; ADW RN Contact Form, dated October 17, 2019; ADW Person Centered Assessment, dated September 6, 2019; and ADW Medication Profile, dated September 6, 2019
- D-6 ADW Person Centered Assessment, dated October 17, 2019; and ADW Informed Consent and Release of Information, dated October 17, 2019
- D-7 ADW Log, dated December 3, 2019 through December 6, 2019
- D-8 ADW Medical Necessity Evaluation Request, dated August 15, 2019

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) On April 10, 2018, the Appellant submitted a request to transfer her services from Personal Options to a Traditional Agency. (Exhibit D-4)
- 3) The Appellant was both hospitalized and placed in a nursing home on multiple occasions from September 2018 through January 2020.
- 4) On October 17, 2019, the Appellant affixed her signature on the rights and responsibilities form acknowledging she would notify her personal attendant agency within 24 hours prior to the day services were to be provided if services were not needed; cooperate with all scheduled in-home visits; and notify the ADW providers and/or resources consultant of a change in residence or an admission to a hospital, nursing home or other facility. (Exhibit D-3)
- 5) On October 17, 2019, [REDACTED] (Ms. [REDACTED]), Homecare RN with [REDACTED], and [REDACTED] (Ms. [REDACTED]), Case Manager with [REDACTED] ([REDACTED]), were present at the Appellant's home to conduct an ADW Assessment and

complete an ADW Service Plan as a 30-day/ post hospital change in condition review. (Exhibits D-5 and D-6)

- 6) The Appellant's October 17, 2019 assessment was completed by Ms. [REDACTED] Ms. [REDACTED] logged the Appellant "has just gotten out of the hospital on October 14, 2019 after having heart catheterization and having multiple medical issues." (Exhibit D-6)
- 7) The October 17, 2019 assessment further documented the Appellant "has not been getting her homemaker services as they have been scheduled as she has been in and out of the hospital and they have been unable to get in to see her." (Exhibit D-6)
- 8) The Appellant notified her case manager of her second admission to the hospital in October 2019. (Exhibit D-2)
- 9) On October 30, 2019, [REDACTED] filed a request for discontinuation of the Appellant's ADW personal attendant services due to non-compliance with the program and because the participant no longer desires services. (Exhibit D-2)
- 10) On November 12, 2019, the Respondent issued a notice of discontinuation of services to the Appellant due to the Appellant being persistently non-compliant with member's responsibilities. (Exhibit D- 2)

APPLICABLE POLICY

BMS Provider Manual §501 – Program Description – reads, in part:

Within the ADW program, members may choose from either the Tradition (Agency) Model or the Personal Options Model for service delivery. In the Traditional Model, member receive their services from employees of a provider agency verified by the Operating Agency (OA) and have individualized service hours based on their assessed level of need within their service levels. In Personal Options, members can fire, train, supervise, and terminate their own employees and are allocated a budget based on their assessed level of need.

A member on the ADW must receive personal attendant services on a monthly basis, unless temporarily in a nursing home, hospital, or other inpatient medical facility.

BMS Provider Manual § 501.29 – Rights and Responsibilities – provides in part:

At a minimum, case management agencies or resources consultants, as applicable, must communicate in writing including accessible format as requested to each person (and/or) their legal representative) receiving ADW services initially, upon admission to the agency (transfer) and annually the following:

Their right to:

- Transfer to a different provider agency or to Personal Options
- Address dissatisfaction with services with the provider agency or the Personal Options agency.

And their responsibility to:

- Notify the ADW personal attendant agency within 24 hours prior to the day services are to be provided if services are not needed.
- Cooperate with all scheduled in-home visits
- Notify the ADW providers and/or resource consultant of a change in residence or an admission to a hospital, nursing home or facility.

BMS Provider Manual § 501.32 explains that a person receiving ADW services may request a transfer to another agency or to a 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. 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.

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

- The person is persistently non-complaint with the Service Plan.
- The person no longer desires services.
- The person no longer requires services.

The Request for Discontinuation of Services form must be uploaded into the University Medical Center's (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 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 recipient of ADW and received personal attendant services. On November 12, 2019, the Respondent issued a notice advising the Appellant's ADW services would be discontinued due to persistent non-compliance with the member's responsibilities. The Appellant

contested the Respondent's decision to discontinue her ADW services and argued that she was compliant with member's responsibilities.

The Respondent argued the Department was correct to terminate the Appellant's ADW services because the Appellant failed to comply with member's responsibilities to notify her personal attendant agency within 24 hours when she did not need services and failed to permit agency staff in her home to provide service as scheduled.

On October 17, 2019, Ms. [REDACTED] and Ms. [REDACTED] were present at the Appellant's home to conduct an ADW Assessment and complete an ADW Service Plan as a 30-day/post hospital change in condition review. The October 17, 2019 assessment completed by Ms. [REDACTED] logged the Appellant "has just gotten out of the hospital on October 14, 2019 after having heart catherization and having multiple medical issues." The October 17, 2019 assessment further documented the Appellant "has not been getting her homemaker services as they have been scheduled as she has been in and out of the hospital and they have been unable to get in to see her." Ms. [REDACTED] testified the Appellant wanted a *Pro Re Nata* (PRN) schedule, meaning she wanted her services scheduled as the situation demanded. Ms. [REDACTED] testified she advised the Appellant at the time of the assessment the agency was unable to create a PRN schedule. The Appellant testified she requested her days and hours of personal attendant services changed to the afternoon because she has a hard time getting up in the morning, to which the agency agreed.

On October 18 and October 21, 2019, Ms. [REDACTED] alleged that personal attendants reported to the Appellant's home and the Appellant refused to answer the door. The Appellant argued she was home during her scheduled personal attendant service hours and that it was the personal attendants who often did not show up as scheduled. Although, the Respondent testified there were multiple occasions the Appellant failed to permit staff to complete their duties by denying them entry into her home, daily logs provided did not align with the dates provided in testimony. There was no evidence, such as Personal Care Logs (PALs), to document the alleged attempts to provide personal attendant services. The Appellant credibly argued that she did not refuse personal attendants in her home. Therefore, testimony regarding the Appellant not cooperating with in-home visits was hearsay and not considered reliable.

The Respondent testified the Appellant failed to notify the agency on multiple occasions that she did not require services. The Appellant testified she was hospitalized and placed in a nursing home on many occasions from September 2018 through January 2020. The Appellant testified she notified her case manager and [REDACTED], Scheduler for [REDACTED], of her second admission to the hospital in October 2019. The October 18, 2019 Nurses Notes confirm the Appellant notified her case manager the time of her second admission to the hospital. Because the Appellant's case manager is an employee of the agency, she complied with member's responsibilities requirement to notify the agency. Based on the information listed on the Appellant's assessment, the Appellant's case manager was aware the Appellant was hospitalized on multiple occasions. The Respondent and the Appellant failed to present evidence regarding whether the agency was notified at the time of her initial admission to the hospital. However, even without a determination of whether the Appellant notified the agency when she was initially admitted to the hospital, failure to notify the agency on one single occasion does not establish persistent failure on the part of the Appellant. The Respondent failed to provide evidence of

instances showing the Appellant was persistently non-compliant with the member responsibility to notify the agency when she did not require services.

Additional reasons for discontinuation set forth in the evidence presented by the Department, but not included in the notice of closure, included that the Appellant no longer desired services and due to multiple requests for agency transfers.

On October 30, 2019, Ms. [REDACTED] requested a discontinuation of the Appellant's ADW services. The request for discontinuation indicated the reason for the request was because the Appellant was non-compliant with the program and the Appellant no longer desired services. The Respondent attached summaries from Ms. [REDACTED] on October 18, 2019 and October 31, 2019, to its request for discontinuation. Ms. [REDACTED] summaries contain inconsistent information and are deemed unreliable. The Appellant argued she needs services and did not indicate she no longer desired services as alleged in the request for discontinuation.

The Respondent further argued the Appellant was non-compliant with member's responsibilities because she requested to transfer her case management and personal attendant agency multiple times since April 2018. The Appellant testified she requested changes in agencies due to personal attendants not returning to her residence. Policy is clear the Appellant has the right to request a transfer to a different provider if dissatisfied with services and such action is not grounds for termination of services. It is noted the notice for discontinuation did not indicate the Appellant was terminated as a result of multiple transfers.

It is also noted the last request the Respondent received from the Appellant to transfer was not granted. Ms. [REDACTED] testified a transfer was requested on behalf of the Appellant, but she was advised by the Bureau of Senior Services (BoSS) the underlying cause of the Appellant's excessive requests for transfer should be addressed through a request for discontinuation of services due to non-compliance instead of another transfer. The Respondent testified the reason the transfer was not granted was because the matter was pending the fair hearing decision due to closure for non-compliance. Finally, it is noted the hearing was requested within the 13-day notice. Policy explains that the Appellant's ADW services are required to be continued pending the Hearing Officer's decision. It is unclear why the Appellant's services were not continued pending the outcome of the hearing.

Based on the Appellant's testimony and the Respondent's lack of credible documentation, the Respondent failed to establish that the Appellant was persistently non-compliant with member's responsibilities. It is noted there was no allegations of persistent non-compliance with the Appellant's service plan, only with member's responsibilities.

CONCLUSIONS OF LAW

- 1) A request for discontinuation of ADW services may be completed when the participant is persistently non-compliant with member's responsibilities.

- 2) Because the Appellant notified her personal attendant agency that she had an admission to the hospital and nursing home in September 2019, she met her member responsibility to report when services were not required.
- 3) Evidence failed to establish the Appellant failed to cooperate with member responsibility to keep all scheduled in-home visits.
- 4) Evidence failed to demonstrate the Appellant was persistently non-compliant with member's responsibilities.
- 5) Evidence failed to establish the Appellant no longer desired services.
- 6) Policy does not permit discontinuation of services due to request for agency transfers.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Department to discontinue the Appellant's Aged and Disabled Waiver services due to persistent non-compliance with the member's responsibilities.

ENTERED this ____ day of February 2020.

Danielle C. Jarrett
State Hearing Officer