



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
Telephone: (304) 558-2278 Fax: (304) 558-1992

Jolynn Marra  
Interim Inspector General

February 4, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2891

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,

Angela D. Signore  
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-2891**

**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 29, 2020, on an appeal filed December 12, 2019.

The matter before the Hearing Officer arises from the November 8, 2019 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 R. Grueser, RN, WV Bureau of Senior Services (BoSS). Appearing as witnesses for the Department were ██████████, Senior Services Resource Consultant, ██████████ (██████), ██████████, Support Supervisor, ████████, and ██████████, Lead Resource Consultant, ████████. Appearing as a Representative for the Appellant was ██████████. All participants were sworn and the following documents were admitted into evidence.

**EXHIBITS**

**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 November 15, 2019
- D-3 ADW Case Management Notes, dated August 16, 2019 through October 15, 2019
- D-4 PPL Personal Options – Aged and Disabled Waiver Contact Form January 2019 through October 2019
- D-5 ██████████ Labor Earnings for Periods December 24, 2018 through January 06, 2019, and October 01, 2018 through October 14, 2018

**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] ([REDACTED]).
- 3) The Appellant opted to receive Aged/Disabled Waiver benefits using the Personal Options Model, which required her to secure and hire a personal attendant of her choice.
- 4) The Appellant has not utilized PA services since January 06, 2018, in excess of 180 days. (Exhibit D-2)
- 5) On November 06, 2019, [REDACTED] filed a request for discontinuation of the Appellant's ADW services due to no services had been provided for 180 continuous days. (Exhibit D-2)
- 6) On November 08, 2019, notification was issued to the Appellant that her ADW services were discontinued because no personal attendant services have been provided for 180 days. (Exhibit D-2)

**APPLICABLE POLICY**

**Bureau for Medical Services (BMS) Manual §501.11.2 provides, in part:**

Under Personal Options Fiscal Management Services (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 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 FE/A.
- 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

**Bureau for Medical Services (BMS) Manual §501.17 provides, in part:**

Personal Attendant (PA) services are defined as long-term direct care and support services that are necessary to enable a person to remain at home rather than enter a nursing home, or to enable a person to return home from a nursing home.

**BMS Manual §501.22 provides, in part:**

No ADW services may be charged while an individual is inpatient in a nursing home, hospital, rehabilitation facility, or other inpatient medical facility, except for PA services. PA services may be provided on the day of admission and the day of discharge.

**BMS Manual §501.34(A) provides, in part:**

A discontinuation of services may be requested when no PA services have been provided for 180 continuous days.

**DISCUSSION**

The Appellant is a recipient of ADW services. Pursuant to 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 November 08, 2019, the Respondent issued a notice advising the Appellant that her ADW services would be terminated because no ADW PA services had been provided since January 06, 2018, a period greater than 180 days.

As an ADW member who had opted to receive services through the Personal Options model, the Appellant was responsible for securing and hiring a personal attendant of her choosing. During the hearing, the Appellant's Representative testified that hospitalizations and unsuccessful attempts to secure a personal attendant presented obstacles in receiving services; however, there are no

exceptions supported by policy to allow for ADW services to continue beyond 180 continuous days of non-utilization. It should also be noted that the parties agreed the Appellant was given the option of switching to ADW Traditional Model for service delivery but declined the offer.

Because ADW PA services had not been utilized for more than 180 continuous days, the Respondent was correct to terminate the Appellant's ADW services.

### **CONCLUSIONS OF LAW**

- 1) The Respondent proved by a preponderance of evidence that the Appellant has not received personal attendant services in excess of 180 continuous days.
- 2) Because the Appellant has not received personal attendant services in excess of 180 continuous days, policy requires the discontinuation of the Appellant's ADW 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 February 2020.**

---

**Angela D. Signore  
State Hearing Officer**