



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
P.O. Box 1247  
Martinsburg, WV 25402

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 29, 2015

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-1613

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,

Lori Woodward  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS

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

██████████,

**Claimant,**

v.

**Action Number: 15-BOR-1613**

**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 28, 2015, on an appeal filed March 23, 2015.

The matter before the Hearing Officer arises from the March 4, 2015 decision by the Respondent to discharge the Claimant from the Title XIX I/DD Waiver Program for not accessing or utilizing Direct Care Services for 180 consecutive days.

At the hearing, the Respondent appeared by Representative ██████████, Lead Service Facilitator with APS Healthcare. Appearing as a witness for the Respondent was Taniua Hardy, Bureau for Medical Services. The Claimant appeared by his Representative, ██████████. Appearing as witness for the Claimant was ██████████, Service Coordinator, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 I/DD Waiver Manual, Chapter 513.6
- D-2 I/DD Waiver Manual, Chapter 513.1
- D-3a Discharge Notification dated March 4, 2015
- D-3b Certified Mail Receipt dated March 9, 2015
- D-4 I/DD Waiver Direct Care Services: Service Code Breakdown
- D-5 I/DD Waiver Service Billing History from August 30, 2014 – March 5, 2015
- D-6a I/DD Waiver Service Purchase Detail for Initial Purchase dated July 10, 2014
- D-6b I/DD Waiver Service Purchase Detail for Annual Purchase dated August 27, 2014
- D-7 Electronic mail sent to ██████████ from ██████████ dated March 4, 2015

- D-8 Electronic mail sent to [REDACTED] from [REDACTED] dated March 3, 2015
- D-9a WV Request to Continue Services Form, dated October 13, 2014
- D-9b WV Request to Continue Services Form dated December 24, 2014
- D-10a Notification of discharge letter dated December 3, 2014
- D-10b Signed Certified Mail Receipt

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 Claimant is a recipient of I/DD Waiver Program (Program). If at least one Direct Care I/DD Waiver Service is not accessed or utilized for a period of 180 consecutive days, the recipient may be discharged from the Program. (Exhibit D-1)
- 2) The Claimant failed to access any Direct Care Services after August 30, 2014. (Exhibits D-6a and D-6b) The Respondent sent notification to the Claimant's representative, [REDACTED] (Ms. [REDACTED] on December 3, 2014, noting that the Claimant "had not accessed WV I/DD Waiver Direct Care Services for at least 90 consecutive days when Skilled Nursing – LPN 1:1 (T1003:U4) was last accessed on August 30, 2014." (Exhibit D-10a)
- 3) The Claimant's Service Coordinator, [REDACTED] (Mr. [REDACTED] applied to continue services on October 13, 2014, which was approved, with an extension expiration date of December 31, 2014. (Exhibit D-9a)
- 4) On December 24, 2014, a subsequent request to continue services submitted by Mr. [REDACTED] was approved with an extension expiration date of March 1, 2015. It was noted on the approval that the "hold" period for the program by policy extends to 180 days and if Direct Care Services is not accessed by March 1, 2015, the Claimant would be subject to discharge. (Exhibit D-9b)
- 5) Notice of program discharge was sent to the Claimant's representative on March 4, 2015, explaining that, "A recent review of records shows that you have not accessed Direct Care Services on the I/DD Waiver Program for 180 consecutive days since Skilled Nursing – LPN 1:1 (T1003:U4) was last accessed on 8/30/2014 ... **To facilitate discharge from the program your date of discharge will be April 4, 2015 ...**" (Exhibit D-3a)
- 6) The Claimant's representative acknowledged that Direct Care Services have not been utilized for over 180 days. She stated that the Claimant should not be discharged from the I/DD program because he was unable to utilize these services due to a series of

events which she characterized as “not his fault”: hospitalization due to kidney surgery, incarceration, and a series of institutional placements stemming from aggression issues.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6 specifies that a member may be discharged if the member does not access or utilize at least one direct care I/DD Waiver Service for a period of 180 consecutive days. The policy does not provide any exceptions to this condition for discharge.

### **DISCUSSION**

Policy for the I/DD Waiver Program provides for discharge when a recipient has not accessed Direct Care Services for 180 consecutive days. The evidence showed that the last time the Claimant utilized Direct Care Services was on August 30, 2014. The Claimant’s representative did not dispute that the Claimant had not utilized any Direct Care Services for a period of 180 consecutive days. Instead, she argued that an exception should be made as it was not because of any fault of the Claimant. Although a series of events may have prevented the Claimant from utilizing the Direct Care Services, there are no exceptions to the discharge policy. The Department acted correctly in seeking his discharge.

### **CONCLUSION OF LAW**

As the Claimant did not receive Direct Care I/DD Waiver Services for at least 180 consecutive days, the Department’s proposal to discharge him from the program is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department’s proposal to discharge the Claimant from the Title XIX I/DD Waiver Program.

**ENTERED this 29<sup>th</sup> day of April 2015.**

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**Lori Woodward, State Hearing Officer**