



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 23, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 14-BOR-3678

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.

If you believe the decision was reached in error, you may appeal. See the attached explanation of Claimant's Recourse.

Sincerely,

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

cc: Chairman, Board of Review  
Pat Nisbet, BMS, WVDHHR

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

██████████,

**Claimant,**

v.

**Action Number: 14-BOR-3678**

**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 15, 2015, on an appeal filed November 18, 2014.

The matter before the Hearing Officer arises from the November 10, 2014 proposal by the Respondent to discharge the Claimant from the Title XIX I/DD Waiver Medicaid Program for failing to access direct care I/DD Waiver services for a period of 180 consecutive days.

At the hearing, the Respondent was represented by Pat Nisbet, Director of the Home and Community-Based Services Unit, Bureau for Medical Services, WVDHHR, and ██████████, Lead Service Support Facilitator, APS Healthcare. The Claimant appeared by his mother, ██████████. Appearing as witnesses for the Claimant were ██████████, Service Coordinator, ██████████, and ██████████, the Grievant's friend. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 West Virginia Medicaid Regulations Chapter 513.6
- D-2 West Virginia Medicaid Regulations Chapter 513.1
- D-3a Amended notice dated November 10, 2014
- D-3b Certified mail receipts
- D-4 Electronic mail transmission from ██████████ to ██████████ dated November 10, 2014
- D-5 Electronic mail transmission between Pat Nisbet and ██████████ dated December 3, 2014
- D-6a Annual Purchase Detail for November 19, 2013

- D-6b Critical Juncture Crisis Purchase Detail for December 11, 2013
- D-7a I/DD Waiver Direct Care Services: Service Code Breakdown
- D-7b Molina Billing History

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 or about November 10, 2014, the Claimant was notified (D-3a) that he would be discharged from I/DD Waiver Medicaid Program services because he had not accessed direct care services under the program for a period of 180 consecutive days.
- 2) ██████████, Lead Service Support Facilitator for APS Healthcare, testified on behalf of the Respondent, indicating that the Department seeks to discharge the Claimant from the I/DD Waiver Program because he has not accessed direct care services since April 6, 2014. It should be noted that the Claimant was admitted to ██████████ Hospital on April 27, 2014, and is still a patient at the facility (see electronic mail transmission, Exhibit D-5). Exhibit D-7a includes service codes for I/DD Waiver Direct Care Services, and Ms. ██████ testified that Exhibit D-7b, the Claimant's Molina Billing History, demonstrates that the Claimant has not received a direct care service since April 6, 2014, at which time he accessed skilled nursing services. As a result, the Department has opted to discharge the Claimant in accordance with policy.
- 3) ██████████, the Claimant's mother, testified that the Claimant had been evicted from his residence and placed in her care because he had nowhere else to go in April 2014. During that time, the Claimant attacked Ms. ██████ at which time he was placed in the mental health facility. She contended that his previous provider was not providing the services he required.  
  
██████████, the Claimant's friend, testified that the Claimant does not dispute the date of his last direct care service; however, he could not find anyone to provide the services due to his needs. In addition, the Claimant has been evicted from several residences and it is a struggle to secure housing for him. Ms. ██████ stated that the Claimant will receive a lump sum from a lawsuit in February 2015 and there are plans to purchase a residence for him so he will not have to rent homes. He is ready to be released from ██████ Hospital and, upon his release, he will have access to direct care services provided that he has a place to live.

### **APPLICABLE POLICY**

West Virginia Medicaid Regulations, Chapter 513.6 (D-1) address reasons for which a member can be discharged from I/DD Waiver services. This section specifies that a member can be discharged when he/she does not access or utilize at least one direct care service for a period of 180 consecutive days. There is no information in this chapter to indicate that exceptions are granted for individual circumstances.

### **DISCUSSION**

Policy specifies that a member can be discharged from I/DD Waiver services when he/she does not access or utilize at least one direct care service for a period of 180 consecutive days. The Claimant has not accessed direct care services since April 6, 2014. Therefore, the Department has acted correctly in seeking his discharge from the I/DD Waiver Program.

### **CONCLUSIONS OF LAW**

As the Claimant has not received 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 Title XIX I/DD Waiver Medicaid Program services.

**ENTERED this 23rd Day of January 2015.**

---

**Pamela L. Hinzman  
State Hearing Officer**