



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
2699 Park Avenue, Suite 100  
Huntington, WV 25704

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

February 29, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1008

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,

Todd Thornton  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Medical Services

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-1008**

**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 February 17, 2016, on an appeal filed January 5, 2016.

The matter before the Hearing Officer arises from the December 24, 2015 decision by the Respondent to terminate the Appellant's participation in the Intellectual Disabilities and Developmental Disabilities (I/DD) Waiver Program.

At the hearing, the Respondent appeared by Taniua Hardy. Appearing as a witness for the Respondent was ██████████. The Appellant appeared *pro se*, by her mother and guardian ██████████. Appearing as witnesses for the Appellant were ██████████ and ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services Provider Manual, Chapter 513, §513.6: I/DD Waiver Services (excerpt)
- D-3 Notice of decision, dated December 24, 2015
- D-3a Certified mail receipt
- D-4 Screen print of an "I/DD Waiver Casenote" regarding the Appellant, dated June 8, 2015

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 approved for I/DD Waiver Program services.
- 2) The Appellant did not access or utilize direct care services through the I/DD Waiver Program for at least 180 consecutive days.
- 3) On December 24, 2015, the Respondent mailed the Appellant notification (Exhibit D-3) that she would be discharged from the I/DD Waiver Program on that basis.

## **APPLICABLE POLICY**

The policy regarding member discharge for the I/DD Waiver Program is located in Bureau for Medical Services Provider Manual, Chapter 513: I/DD Waiver Services, at §513.6. This policy allows a person approved for services through the program to be discharged when that person “does not access or utilize at least one direct care I/DD Waiver Service for a period of 180 consecutive days.”

## **DISCUSSION**

The Respondent discharged the Appellant from the I/DD Waiver Program based on the failure to access or utilize direct care services through that program by the deadline established by policy.

Undisputed testimony clearly established this deadline was not met. The guardian for the Appellant offered testimony explaining the unmet deadline, but the only exception allowed by policy (in the instance of a signed transfer or discharge form) was not applicable to this case. One could speculate that the policy intent of the 180 day period is to accommodate delays such as those mentioned by the Appellant’s guardian and that providing a further extension would be redundant. However, even if this is not the intent of that policy, the Board of Review can neither make policy nor create policy exceptions. The Respondent was correct to discharge the Appellant from the I/DD Waiver Program on this basis.

## **CONCLUSION OF LAW**

Policy for the I/DD Waiver Program allows individuals to be discharged from the program when direct care services have not been accessed or utilized in 180 consecutive days. Because the Appellant did not meet this usage deadline, the Respondent was correct to discharge the Appellant from the program.

**DECISION**

It is the decision of the State Hearing Officer to **uphold** Respondent's decision to discharge the Appellant from the I/DD Waiver Program.

**ENTERED this \_\_\_\_ Day of February 2016.**

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**Todd Thornton  
State Hearing Officer**