



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

Earl Ray Tomblin  
Governor

BOARD OF REVIEW  
416 Adams St., Suite 307  
Fairmont, WV 26554

Karen L. Bowling  
Cabinet Secretary

September 15, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 16-BOR-2443

Dear [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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

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

cc: Taniua Hardy, BMS

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-2443**

**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 September 12, 2016, on an appeal filed August 1, 2016.

The matter before the Hearing Officer arises from the July 25, 2016 decision by the Respondent to propose termination of Appellant's Medicaid I/DD Waiver Program services.

At the hearing, the Respondent appeared by Josh Ruppert, Lead Service Support Facilitator, KEPRO. Appearing as a witness for the Respondent was Taniua Hardy, Program Manager, Bureau for Medical Services (BMS). The Appellant was represented by his mother/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-2 I/DD Waiver Manual §5.13.26 – Discharge
- D-3 Notice of Program Discharge for Not Accessing I/DD Waiver Direct Care Services, dated 7/25/16
- D-4 U.S. Postal Service Certified Mail Receipt, signed by ██████████ on 8/1/16
- D-5 Request to Continue Services (DD-12) dated 5/6/16
- D-6 Request to Continue Services (DD-12) dated 6/13/16
- D-7 Correspondence from Patricia S. Nisbet, Director, dated 3/22/16

D-8 Timeline of Conversations & Attempts to Schedule for the period of 1/18/16 through 8/5/15

\*Exhibit D-1 was not submitted into evidence.

**Appellant's Exhibits:**

A-1 Appellant's written argument (dated 8/26/16) for continued I/DD eligibility with supporting documentation (80 pages)

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 is an active recipient of Medicaid I/DD Waiver Program benefits and services.
- 2) On or about July 25, 2016, Appellant was notified (D-3) that he was being discharged from participation in the I/DD Waiver Program because he had not accessed/utilized direct care services within 30 days.
- 3) Appellant terminated services with [REDACTED] due to its inability to provide direct care service workers. Appellant received his last direct care service from [REDACTED] on or about January 24, 2016.
- 4) Appellant secured [REDACTED] to provide services effective February 2016.
- 5) [REDACTED], Appellant's mother/representative, was required to complete certification training before she could provide direct care services to her son through [REDACTED].
- 6) Appellant did not receive any I/DD Waiver direct care services for February and March 2016.
- 7) On March 22, 2016, correspondence was sent to all I/DD Waiver providers by Patricia S. Nisbet, Director, indicating that effective April 1, 2016, BMS was implementing the discharge policy referenced in section 513.26. It is noted, however, that this policy has been in effect since January 2015.
- 8) Appellant did not receive any direct care services in April 2016, but because his Request to Continue Services (D-5) was granted, discharge proceedings were not initiated by Respondent.

- 9) Appellant did not receive any direct care services in May 2016, and his June 13, 2016 Request to Continue Services (D-6) was denied.
- 10) Testimony proffered by individuals representing ██████ noted (also see Exhibits D-5 and D-6) that a direct care service provider was projected to begin in late February/early March 2016, but a family emergency developed which required that individual to move from the area. ██████ representatives acknowledged that it has been difficult to find a direct care service provider to fit the needs of the Appellant.
- 11) Appellant's mother/representative noted that not unlike ██████, ██████ has been unable to provide direct care service workers, and because she is single parent and full-time school teacher who is raising three (3) children in addition to her special needs son, she was unable to secure the certification training required until school was released for summer break. Appellant noted that her son has not gone without direct care services; she has simply been providing them and was unable to charge until she completed the certification requirements in June 2016. Appellant's mother contended that due to her son's age and the level of care he requires, his need for direct care services has never been greater.

### **APPLICABLE POLICY**

The Medicaid I/DD Waiver Policy Manual §513.26 provides reasons for which an individual can be discharged from continued participation in the I/DD Waiver Program. Among the reasons listed is when an individual does not access or utilize at least one I/DD Waiver service each month (with the exception of service coordination). Individuals who are hospitalized for medical reasons will be considered for an exception.

### **DISCUSSION**

The issue under appeal is whether or not Respondent was correct in its decision to propose discharge of the Appellant from participation in the Medicaid I/DD Waiver Program.

The regulations that govern the Medicaid I/DD Waiver Program stipulate that individuals who do not access or utilize at least one (1) I/DD Waiver service each month may be discharged from the program. There are, however, provisions in place wherein the individual can request to continue eligibility for the I/DD Waiver Program despite not having received services for 30 days, and the Respondent's Bureau for Medical Services (BMS) has discretion in granting those requests (D-5). The intent of this policy is meant to identify and remove individuals who are holding one of the limited I/DD Waiver slots from other eligible individuals who could benefit from these services.

Testimony proffered at the hearing reveals that the Appellant's mother changed case management agencies in January 2016 in an attempt to receive consistent direct care service providers for her son. Because Appellant's mother was unable to participate in [REDACTED] certification process, and [REDACTED] was unable to supply Appellant with a direct care service provider, the Appellant has gone without "billed" direct care services since January 2016. The Appellant's mother, however, provided credible testimony that confirms her professional and personal commitments prohibited her from completing the necessary certification requirements to provide "billed" direct care services for her son until June 2016. This information, coupled with the fact that [REDACTED] has failed to secure a direct care service provider and/or provide direct care services to assist the Appellant with participation compliance requirements, clearly seems inconsistent with the intent of I/DD Waiver discharge policy. The evidence demonstrates that the Appellant's mother changed case management agencies to increase access to direct care service providers for her son, and the termination of I/DD Waiver Program benefits only serves to penalize the Appellant/Appellant's mother. As a result, Respondent's decision to discharge the Appellant from the I/DD Waiver Program cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) Medicaid I/DD Waiver policy provides that a benefit recipient may be discharged from the I/DD Waiver Program if the individual does not access, or utilize, at least one I/DD service (excluding service coordination) each month. The intent of this policy is to identify and remove individuals who occupy the limited number of I/DD Waiver slots and do not require direct care services.
- 2) The evidence demonstrates that Respondent's proposal to discharge Appellant is inconsistent with the intent of policy. Appellant switched case management agencies to gain access to additional direct care services, and due to circumstances beyond Appellant's control, is being penalized. The evidence clearly demonstrates that the Appellant continues to require direct care services.
- 3) Respondent's decision to discharge Appellant from the I/DD Waiver Program cannot be affirmed

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** Respondent's proposal to discharge the Appellant from participation in the Medicaid I/DD Waiver Program.

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

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**Thomas E. Arnett  
State Hearing Officer**