



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Charleston, West Virginia 25313
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Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 5, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1226

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,

Natasha Jemerison
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**

[REDACTED],

Appellant,

v.

Action Number: 17-BOR-1226

**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 [REDACTED]. 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 March 29, 2017, on an appeal filed February 6, 2017.

The matter before the Hearing Officer arises from the December 21, 2016 decision by the Respondent to terminate Appellant's benefits and services under the Medicaid Aged and Disabled Waiver Program due to non-compliance.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Department were [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Services Policy Manual §501.34
- D-2 Notice of Decision, dated December 21, 2016
- D-3 Aged and Disabled Waiver Request for Discontinuation of Service form with supporting documentation, dated December 20, 2016

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 recipient of benefits and services under the Medicaid Aged and Disabled (ADW) Waiver Program.
- 2) The Appellant has received services from seven (7) different homemaker agencies since June 2014.
- 3) In February 2016, the Appellant was evicted from her apartment due to a fire code violation from hoarding boxes of items in her home. (D-3)
- 4) On February 2, 2016, the Appellant moved into a trailer that did not have running water or a working bathroom. Also, the trailer had black mold. (D-3)
- 5) The Appellant's assigned caregivers were unable to provide services to the Appellant due to the unclean and unsafe conditions of the Appellant's home.
- 6) The Appellant refused to remove the clutter from her home or allow caregivers to assist her.
- 7) Between August 2015 and November 2016, the Appellant has had at least 15 different caregivers, because she frequently called the homemaker agencies and requested new caregivers. (D-3)
- 8) On December 21, 2016, the Appellant was notified that the services she received under the Medicaid Aged and Disabled Waiver (ADW) program were discontinued, because she was persistently non-compliant. (D-2)

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual (ADW policy) section 501.34.A allows discontinuation of services when:

- A. No Personal Attendant services have been provided for 180 continuous days – example, an extended placement in long-term care or rehabilitation facility.
- B. Unsafe Environment – an unsafe environment is one in which the Personal Attendant and/or other agency staff are threatened or abused and the staff's welfare is in jeopardy. This may include, but is not limited to, the following circumstances:

- a. The person receiving ADW services or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a Personal Attendant or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals or verbal threats to harm the Personal Attendant and/or other agency staff.
- b. The person or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
- c. The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures. This can be found at: <http://www.dhhr.wv.gov/bms/Programs/WaiverPrograms/ADWProgram/Pages/ADW-Manuals-and-Forms.aspx>
- C. The person is persistently non-compliant with the Service Plan.
- D. The person no longer desires services.
- E. The person no longer requires services.
- F. The person can no longer be safely maintained in the community. No personal attendant services have been provided for 180 continuous days.

DISCUSSION

On December 21, 2016, the Appellant was notified that the services she received under the Medicaid Aged and Disabled Waiver (ADW) program were discontinued, because Appellant was persistently non-compliant. The Appellant requested a fair hearing to contest the Department's decision.

ADW policy allows discontinuation of services when the person is persistently non-compliant with the Service Plan. In this situation, a Request for Discontinuation of Services form must be completed.

The Department's representative, Tamra Grueser, testified that the Appellant was non-compliant with her ADW Service Plan. The Department's witnesses, [REDACTED], [REDACTED], and [REDACTED], each gave corroborating testimony to support the Department's determination that the Appellant was non-compliant. They stated that the Appellant had several different caregivers, because she did not like the ones the agencies sent and requested that the caregivers not return to her home. Ms. [REDACTED] stated that the Appellant was verbally abusive to many of the caregivers and made them perform duties outside of their job scope. Each witness described the Appellant as a hoarder. They described the condition of the Appellant's home as being poor and unsafe. At one point, the Appellant did not have running water or a working bathroom. Ms. [REDACTED] stated that her agency contacted someone to make repairs to the Appellant's home, but they were unable to do so until the Appellant agreed to remove the excess clutter from her home. They stated the Appellant's home was not passable, and the caregivers were unable to perform services.

The Appellant stated that she was not verbally abusive to her caregivers. She also stated that she does not hoard items in her home. She admitted to having black mold inside of her home. The Appellant testified that she requested new caregivers, because the ones that were assigned to

come to her home refused to work. The Appellant added that she was unable to change the conditions of her home.

After reviewing the evidence and testimony, it is clear the Appellant has been non-compliant. She refused services by not allowing caregivers to return to her home. The Appellant had also failed to provide a clean and safe environment so that her caregivers could enter the Appellant's home and provide services. The Department was correct in its decision to discontinue the services the Appellant received under the Medicaid ADW program.

CONCLUSION OF LAW

Because the Appellant was persistently non-compliant with her ADW Service Plan, the Department correctly discontinued her Medicaid ADW services pursuant to ADW policy section 501.34.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to discontinue the Appellant's benefits and services received under the Medicaid Aged and Disabled Waiver Program due to non-compliance.

ENTERED this 5th Day of April 2017.

**Natasha Jemerison
State Hearing Officer**