



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

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
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Jolynn Marra
Interim Inspector
General

April 9, 2019



RE: [REDACTED] v. WVDHHR
ACTION NO.: 19-BOR-1234

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Tamra Grueser, Bureau of Senior Services

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

██████████,

Appellant,

v.

ACTION NO.: 19-BOR-1234

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on March 26, 2019, on an appeal filed February 15, 2019.

The matter before the Hearing Officer arises from the January 23, 2019 determination by the Respondent to terminate the Appellant's Medicaid Aged and Disabled Waiver program services.

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

Department's Exhibits:

- D-1 Bureau for Medical Services Manual §§ 501.33-501.34 and 501.28-501.30
- D-2 ADW Request for Discontinuation of Services, dated December 4, 2018
- D-3 ADW Case Management Monthly Contacts, dated June through November 2018
- D-4 Handwritten Case Management Progress notes, dated June through December 2018; Incident #INC-07292-C6S9, dated December 4, 2019; ADW RN Contact Form, dated May 24, 2018; Behavior Contract, dated May 24, 2018
- D-5 Incident #INC-07292-C6S9, dated December 4, 2018; Incident Report Screenshots, illegible date
- D-6 Respondent Correspondence, dated January 7, 2019
- D-7 Handwritten Note and Facsimile Report from ██████████, dated January 9, 2019

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Medicaid Aged and Disabled Waiver (ADW) Program services.
- 2) [REDACTED] (Nurse [REDACTED]) was the Appellant's RN Case Manager for [REDACTED] (Exhibit D-2).
- 3) On December 4, 2108, Nurse [REDACTED] completed a request for discontinuation of ADW services based on an unsafe environment and the Appellant's non-compliance with the program (Exhibit D-2).
- 4) On January 23, 2019, the Respondent issued a notice advising the Appellant that her Medicaid ADW program services would be discontinued due to "unsafe environment and non-compliant with member's responsibilities" pursuant to Medicaid ADW Policy §501.34.
- 5) On May 24, 2019, the Appellant affixed her signature to a behavior contract that specified:
1. Only the Appellant, not family or friends, could be transported for errands, 2. The Appellant would not request any services outside of her plan of care without obtaining preapproval from the RN, 3. The Appellant, residents of her home, and visitors were not to request assistance contacting grandchildren, 4. Domestic disputes were to occur after hours when Personal Assistant (PA) was not in the home, 5. Services including meals and grocery shopping were to be completed for the Appellant only; 6. The Appellant understood that concerns of verbal or emotional abuse, hostile work environment, violation of court orders, or requests to aid in such violation were reportable to the Bureau of Senior Services and Adult Protective Services (APS) (Exhibit D-4).
- 6) ADW provider agencies had difficulty staffing the Appellant's home (Exhibit D-4).
- 7) On December 4, 2019, Nurse [REDACTED] met with the Appellant at her home for a scheduled meeting to align the Appellant with [REDACTED] (Senior Citizens) for ADW provider services (Exhibit D-4).
- 8) Prior to the arrival of the Senior Citizens staff, Nurse [REDACTED] attempted to meet with the Appellant to review "consent paperwork." The Appellant's husband was present at the residence at that time (Exhibit D-4).

- 9) On December 4, 2019, the Appellant's husband stated to Nurse [REDACTED] to "get the fuck out of my house" multiple times and with his hands, pushed Nurse [REDACTED] shoulder from behind as she was attempting to leave the home (Exhibits D-4 and D-5).
- 10) Nurse [REDACTED] feared for her safety due to the Appellant's husband's actions.
- 11) On December 4, 2019, Nurse [REDACTED] called 911, filed a report with the West Virginia State Police, and completed an APS referral (Exhibits D-4 and D-5).

APPLICABLE POLICY

Bureau for Medical Services (BMS) Manual §200 Definitions provides in part:

Abuse: The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

BMS Manual §501.29 Rights and Responsibilities:

At a minimum, Case Management agencies or Resource Consultants, as applicable, must communicate in writing including accessible format as requested to each person and/ or their legal representative receiving ADW services initially, upon admission to the agency (transfer) and annually the following: ... Their responsibility to:

- C. Comply with the agreed upon Person-Centered Service Plan ...
- G. Maintain a safe home environment for all service providers ...
- O. Not ask Personal Attendants to provide services that are excluded by policy or not on their Service Plan.

BMS Manual §501.34 Discontinuation of Services provides in part:

The following require a request for discontinuation of services: ...

- B. Unsafe Environment: An unsafe environment is one in which agency staff are threatened or abused and the staff's welfare is in jeopardy ...
- C. The person is persistently non-compliant with the Service Plan.

The effective date for discontinuation of services is thirteen calendar days after the date of the Operating Agency (OA) notification letter, if the person or legal representative does not request a hearing. If it is an unsafe environment, services may be discontinued immediately upon approval of the OA, and all applicable entities are notified, i.e. police, APS.

DISCUSSION

The Appellant was a recipient of Medicaid ADW program services. On January 23, 2019, the Respondent issued a notice advising the Appellant that her ADW services were discontinued due to unsafe environment and non-compliance with member responsibilities. The Appellant contested the discontinuation of ADW services and denied that her home was unsafe or that she was non-compliant.

Pursuant to policy, a request for discontinuation of ADW services must be made when agency staff are threatened or abused and the staff's welfare is in jeopardy or when the Appellant is persistently non-compliant with the Service Plan. During the hearing, the Appellant testified on multiple occasions that she suffered from memory issues and needed to make statements when she thought of them or she would forget. As the Appellant testified that she suffered from memory issues and this Hearing Officer observed the Appellant to have difficulty recalling facts during the hearing, this Hearing Officer found the Appellant's testimony regarding past events to be unreliable.

Unsafe Environment:

To prove that the Appellant's Medicaid ADW services were appropriately discontinued, the Respondent had to demonstrate by a preponderance of evidence that the agency staff was threatened or abused and that the staff's welfare was in jeopardy. Policy clarifies that abuse includes the willful infliction of injury, intimidation, or punishment with resulting physical harm, pain, or mental anguish. The Appellant had a responsibility to ensure a safe environment for agency staff. During the hearing, Nurse [REDACTED] testified that the Appellant's husband stated to "get the fuck out of my house" to her multiple times and then pushed Nurse [REDACTED]. The Appellant testified that her husband did not push Nurse [REDACTED]. The Respondent's evidence reflected a written record consistent with Nurse [REDACTED] testimony. As the Appellant's testimony was found to be unreliable, little weight was given to her testimony. During the hearing, Nurse [REDACTED] testified that she feared for her safety at the Appellant's home on the day of the incident and feared returning or sending other staff to the home. Although no definition for mental anguish is provided, it is reasonable to believe that Nurse [REDACTED] voiced fear for her safety meets the threshold of mental anguish. The Respondent proved one instance of abuse by the Appellant's husband toward agency staff with resulting mental anguish.

During the hearing, the Respondent's witness testified that the previous agency had experienced domestic violence between the Appellant and her husband while agency staff was present; however, no documentation was provided to corroborate this claim. The Respondent's witness testified to a history of hearing over the Appellant's husband over the phone yelling at the Appellant in the background and making the Appellant cry; however, no documentation of Nurse [REDACTED] reported observations was made in the notes submitted as evidence. The Appellant testified that her husband did not yell but spoke with a loud tone that she sometimes mistook as yelling which may have made her cry. As no corroborating documentation was provided, the Respondent witness's testimony regarding domestic violence witnessed by previous agencies and

her reported observations of yelling by the Appellant's husband were given little weight in the decision of this Hearing Officer.

Non-Compliance:

To prove that the Appellant's Medicaid ADW services were appropriately discontinued, the Respondent had to demonstrate by a preponderance of evidence that the Appellant was persistently non-compliant with her Service Plan. During the hearing, the Respondent testified that the Appellant demonstrated a pattern of requesting staff to perform services beyond her Service Plan and that the Appellant was non-compliant with her member responsibilities. The Respondent argued that the Appellant repeatedly asked Personal Attendants to transport her daughter to appointments and run errands under the guise that the appointments and errands were for the Appellant. The Appellant disputed this claim and testified that the Personal Attendant needed to run errands at the school for her daughter and that because the Appellant's granddaughter was also at the school, the Appellant would send her items. No Personal Attendant notes or case documentation was presented to corroborate any recorded history of the Appellant requesting the Personal Attendant to perform tasks for the Appellant's daughter.

Policy stipulates that ADW services may be discontinued for persistent non-compliance with the Service Plan [emphasis added] and does not specify that services may be discontinued for non-compliance with the member's responsibilities. No copy of the Appellant's Service Plan was entered into evidence, nor was any evidence entered to establish that the Appellant had been advised of her member responsibilities as required by policy. Policy requires the Respondent to communicate the Appellant's responsibilities in writing to the Appellant upon her admission or transfer to the agency. As no documentation was entered to reflect the conditions of the Appellant's Service Plan or that she had been advised of her responsibilities as required by policy to be documented, this Hearing Official could not ascertain whether the Appellant was persistently non-compliant with her Service Plan or member responsibilities.

The Respondent testified that the agency had difficulty staffing the Appellant and that this difficulty is indicative of the Appellant's non-safe home environment and non-compliance; however, policy does not indicate that agency difficulty in staffing the Appellant is reason for ADW service termination. Documentation did not provide sufficient reasoning for staffing difficulties to corroborate the Respondent's reasoning claim for the staffing difficulty. Further, the Respondent's documented reasoning included unspecific negative postings made by the Appellant's daughter on staffing websites, which is not an indication that the Appellant was engaged in unsafe or non-compliant behavior.

CONCLUSIONS OF LAW

- 1) A request for discontinuation of Medicaid ADW services may be completed when agency staff are threatened or abused and the staff's welfare is in jeopardy.

- 2) The Respondent's evidence proved one instance of abuse by the Appellant's husband toward agency staff with resulting mental anguish.
- 3) The Respondent correctly terminated the Appellant's Medicaid ADW services on the basis of unsafe environment.
- 4) A request for discontinuation of Medicaid ADW services may be completed when the person is persistently non-compliant with the Service Plan.
- 5) The Appellant's Service Plan was not submitted as evidence.
- 6) The Respondent failed to prove by a preponderance of evidence that the Appellant was persistently non-compliant with her Service Plan.
- 7) The Respondent incorrectly terminated the Appellant's Medicaid ADW services on the basis of non-compliance with the Service Plan.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's Medicaid Aged and Disabled Waiver Program services due to unsafe environment.

ENTERED this 9th day of April 2019.

Tara B. Thompson
State Hearing Officer