



**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**

June 16, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 16-BOR-1781

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,

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

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

cc: Tammy Grueser, BoSS

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-1781**

**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 June 8, 2016, on an appeal filed April 26, 2016.

The matter before the Hearing Officer arises from the April 12, 2016 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance and an unsafe environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Assistant Director, ██████████; ██████████; ██████████, Assistant Director, ██████████; and ██████████, Administrative Assistant, ██████████. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged & Disabled Waiver Services Manual Policy Sections 501.29 and 501.34
- D-2 Aged & Disabled Waiver Request for Discontinuation of Service dated March 18, 2016
- D-3 Discontinuation notice dated April 12, 2016
- D-4 Aged and Disabled Waiver Logs and written statement of ██████████
- D-5 WVDHHR Adult Protective Services Mandatory Reporting Form

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 April 12, 2016, the Respondent issued notice (D-3) to the Appellant, informing her of its proposal to discontinue services under the Aged/Disabled Waiver Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) Tammy Grueser, Registered Nurse with the Bureau of Senior Services (BoSS), testified that the Appellant's services were discontinued for several reasons, including reported drug activity in the home in the presence of a caregiver, allowing an individual into the home who had been banned from the housing complex, and verbal abuse of the care provider by the Appellant's adult daughter, [REDACTED]
- 3) [REDACTED], Assistant Director of [REDACTED], testified that the Appellant has been assigned several homemakers, all of whom have advised the agency of alleged drug activity in the home. The agency has received allegations that the Appellant allowed [REDACTED] to take pills from her locked pill box, and that a neighbor had reportedly been splitting pills with [REDACTED]
- 4) An Aged/Disabled Waiver Log completed by staff with [REDACTED] (D-4) contains an entry for January 29, 2016. This log entry indicates that [REDACTED] came to the apartment, dirtied dishes, let the dishes sit all weekend, and left them for the care provider to wash on Monday. [REDACTED] also asked to borrow money from the care provider, and claimed that the provider was giving her mother a bath incorrectly. The entry indicates that [REDACTED] was verbally abusive to the Appellant and her care provider, and was very controlling of her mother.

A log entry dated February 3, 2016, states that the care provider was ready to walk out of the home because the Appellant wanted her to go to the hospital and pick up [REDACTED] when the provider was not permitted to transport the Appellant's daughter.

On February 8, 2016, the Appellant transferred her services from [REDACTED] to [REDACTED]. An Aged and Disabled Waiver Log entry dated February 25, 2016, states that when the Appellant came home from the hospital, her apartment was in disarray, with dirty dishes piled in the sink. At that time, [REDACTED] was in the apartment with her husband [REDACTED] who had previously been banned from the property. During a home visit on March 8, 2016, agency representatives again found [REDACTED] at the apartment.

A log entry dated March 6, 2016, states that [REDACTED] called and texted the care provider's cell phone several times while the care provider was at the hospital with her child. [REDACTED] allegedly demanded that the care provider drive from [REDACTED] to the Appellant's home in [REDACTED] and then back to [REDACTED] in [REDACTED] because she and her mother were out of cigarettes. [REDACTED] then allegedly called and harassed the care provider until the provider blocked her number. The care provider reported that [REDACTED] would come to

the Appellant's home and sleep in her bed, preventing the Appellant from resting. The provider indicated that there had been pill cups sitting on the kitchen table, and the Appellant stated that a neighbor split her pain pills with [REDACTED]

A log entry on March 23, 2016, states that the care provider reported she could no longer care for the Appellant due to working conditions in the home. The provider reported that the Appellant needed to be in [REDACTED] for a doctor's appointment at 10 a.m. and [REDACTED] arrived at the apartment at 8:30 a.m. on that date, demanding that the provider remove trash from the kitchen immediately. The provider reportedly stated that she would empty the trash, but the Appellant would be late for her appointment. The care provider became concerned and uncomfortable when the Appellant allegedly unlocked a metal box and provided [REDACTED] with pills. [REDACTED] husband, [REDACTED] was present and reportedly stared at the care provider the entire time, making the provider feel uncomfortable. The Appellant was reportedly late for her doctor's appointment due to [REDACTED] mandating that chores be completed before the care provider and the Appellant left for [REDACTED]. The care provider reported that she arrived at the apartment to a sink full of dirty dishes on two dates. One day, she had washed dishes at 3:25 p.m., and then arrived at the residence at 8 a.m. the following day to find two sink fulls of dirty dishes. A care provider also noted that she observed [REDACTED] with white powder on her nose. A written statement from care provider [REDACTED] (D-4) states that – on the two days the care provider worked in the home – [REDACTED] was present. The care provider said that [REDACTED] appeared to be drowsy and slurred her words from time to time.

[REDACTED], Assistant Director of [REDACTED], testified that the Appellant was pleasant, but [REDACTED] caused problems in the home, constantly complained, and was verbally abusive.

[REDACTED], Administrative Assistant at [REDACTED], testified that [REDACTED] often had slurred speech and would become verbally abusive when she could not be understood.

- 5) The Appellant testified that [REDACTED] does not abuse her, and she does not provide pills to her daughter. She stated that [REDACTED] is ill and disabled, and that she is unable to take the Appellant's medication. The Appellant contended that her son-in-law never spoke to or touched care providers, and that her daughter has not screamed at individuals in the home. She stated that the white powder on [REDACTED] nose was zinc oxide she had been using to heal a cut. She also refuted claims about excessive dish washing by the care providers.

### **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that services can be discontinued when a member's home environment is one in which a 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 verbal abuse by the member or household members, and the abusive use of alcohol and/or drugs. Discontinuation can also be proposed when an individual is persistently non-compliant with a Service Plan.

### **DISCUSSION**

Policy states that Aged/Disabled Waiver Services can be discontinued when an individual is persistently non-compliant with the program and provides an unsafe environment for care providers working in the home. Information provided by the Department reveals that the Appellant's daughter was at her residence on a continual basis, was alleged to be using medication not prescribed to her while in the home, and was verbally abusive to agency staff. In addition, the Appellant's daughter demanded services – such as making trips to purchase her cigarettes – which were outside of the scope of the Aged/Disabled Waiver Program. Therefore, the Department acted correctly in proposing discontinuation of the Appellant's Aged/Disabled Waiver Services.

### **CONCLUSIONS OF LAW**

The Department acted correctly in proposing discontinuation of the Appellant's services under the Aged/Disabled Waiver Medicaid Program.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department's proposal to discontinue the Appellant's services through the Aged/Disabled Waiver Medicaid Program.

**ENTERED this 16<sup>th</sup> Day of June 2016.**

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**Pamela L. Hinzman**  
**State Hearing Officer**