



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

August 26, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2103

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
[REDACTED]

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2103

**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 August 11, 2016, on an appeal filed June 13, 2016.

The matter before the Hearing Officer arises from the April 27, 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 ██████████, RN, Nurse Supervisor, ██████████; ██████████, Office Manager, ██████████; and ██████████, RN Supervisor, ██████████.

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 April 14, 2016
- D-3 Discontinuation notice dated April 27, 2016
- D-4 Supporting documentation from ██████████

Appellant's Exhibits:

- A-1 Letter from ██████████, M.D., dated May 26, 2016
- A-2 Patient Medication List
- A-3 Information from Neurology Clinic, ██████████
- A-4 Patient Discharge Instructions from ██████████

- A-5 Letter from [REDACTED] dated August 8, 2016
A-6 Letter from [REDACTED] (undated)

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 27, 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 because the Appellant was allegedly observed placing narcotic pills into a plastic bag in January 2016, placing the bag into a coat, and asking the care provider to deliver the coat to the Appellant's daughter, who allegedly planned to sell the drugs (see Exhibit D-4, Recording Log entry dated January 14, 2016).

Exhibit D-4 states that the care provider telephoned [REDACTED] on January 14, 2016, and was "shaken and concerned." The provider reported that she overheard a telephone conversation between the Appellant and the Appellant's daughter, and believed that the Appellant's daughter was planning to sell some of the Appellant's pain pills. She later observed the Appellant come out of the bathroom, place something into a bag, and put the bag into a coat. The Appellant asked the care provider to take the coat to her daughter, who was "walking down the road and didn't have a coat on." The care provider left the apartment complex parking lot to avoid suspicion from the Appellant, and then contacted the agency to determine a course of action. The agency contacted law enforcement and the care provider took the coat to the police station, where the bag was inspected and the pills were discovered. The Appellant and her daughter were interviewed by law enforcement, and the agency determined that the environment was unsafe for its employees since the care provider had been placed in the middle of an illegal act.

[REDACTED], RN, Nurse Supervisor for [REDACTED], testified that the Appellant's doctor refused to prescribe the medication to her following the incident. [REDACTED], Office Manager for [REDACTED], testified that the agency put a behavioral plan (D-4) in place for the Appellant and the Appellant was to have her medications set up in packets by a pharmacy. The Appellant later broke the behavioral contract and indicated that her daughter would be setting up her medication.

- 3) The Department also asserted that the Appellant had engaged in suspicious behavior with a male (who the Appellant indicated was her "son") in a care provider's presence on

January 21, 2016 (see Exhibit D-4). The Appellant reportedly was observed opening a bottle of pills in her residence and handing some to the man, who then left the apartment.

- 4) A January 12, 2016 entry in Exhibit D-4 indicates that a care provider reported that the Appellant called her personal phone and left threatening messages on her voice mail concerning a bottle of lotion that the Appellant believed the provider had stolen. The Appellant later reported that she found the lotion in its usual location.
- 5) On March 13, 2016, a care provider reported that the Appellant had requested that she withdrawal \$800 from her (the Appellant's) bank account and purchase a bottle of Jack Daniels whiskey. The care provider refused the request.
- 6) An April 14, 2016, a care provider reported that she felt unsafe in the Appellant's home due to drug use and violence. The care provider alleged that the Appellant pushed her, and kept the windows closed because she believed police were watching her. The worker reported that the Appellant was "out of it" one day, did not realize that the care provider was in the apartment, and attempted to report to the agency that the care provider was not at work. The care provider also indicated that the Appellant allegedly admitted to her that she had faked seizures, and that the Appellant had been exchanging blue pills.
- 7) The Appellant denied the allegations, stating that she is on medication for seizures and has not faked seizures. She denied pushing the care provider, and contended that she kept her blinds pulled down because people were outside of her window partying. She also denied taking blue pills, and provided documentation (A-2) to confirm that she is allergic to blue dye. The Appellant testified that she desperately needs the care provided under the Aged/Disabled Waiver Program, and provided letters (A-1, A-5 and A-6) from her physician, property manager and neighbor in support of her need for care. She admitted that she had previously taken drugs, but has made changes and requested a six-month probationary period before she loses her services.

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 attempted to involve her care provider in narcotics delivery, and was alleged to have engaged in other drug-related activity in her home. In addition, one care provider testified that the Appellant had become physically violent with her. Therefore, the Department acted correctly in proposing discontinuation of the Appellant's Aged/Disabled Waiver Services.

CONCLUSION 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 26th Day of August 2016.

**Pamela L. Hinzman
State Hearing Officer**