



**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 31, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 16-BOR-2314

Dear Mr. [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-2314**

**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 23, 2016, on an appeal filed July 15, 2016.

The matter before the Hearing Officer arises from the June 14, 2016 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Nurse Consultant, ██████████; ██████████ Office Manager, ██████████; and ██████████ Case Manager, ██████████. The Appellant appeared pro se. Appearing as witnesses for the Appellant were his mother, ██████████, and ██████████, Home Finder and former Adult Protective Service Worker, WVDHHR. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged & Disabled Waiver Services Manual Policy Section 501.34
- D-2 Aged & Disabled Waiver Request for Discontinuation of Service dated June 14, 2016
- D-3 Discontinuation notice dated June 24, 2016
- D-4 Supporting documentation from CCIL
- D-5 Electronic mail transmissions

**Appellant's Exhibits:**

- A-1 Appellant's log concerning service provider activity and letter from ██████████

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 June 24, 2016, the Respondent issued notice (D-3) to the Appellant, informing him of its proposal to discontinue services under the Aged/Disabled Waiver Medicaid Program due to persistent non-compliance with program guidelines.
- 2) Tammy Grueser, Registered Nurse with the Bureau of Senior Services (BoSS), testified that the Appellant's services were discontinued because he has had ongoing compliance issues since 2012. Ms. Grueser contended that the Respondent has attempted to accommodate the Appellant's needs for a long period of time; however, all efforts have failed and no home care agencies will accept him as a client based on his behaviors.
- 3) Ms. Grueser testified that the Appellant "fires" care providers sent to his residence for various reasons. He will not accept a male care provider, and has "fired" several female providers. Agency staff members have reported that the Appellant discusses problems with his prior caregivers as soon as they arrive in the home. Ms. Grueser pointed out that the Appellant does not have the power to fire care providers, and should instead discuss problems with the agency.
- 4) [REDACTED], Case Manager with [REDACTED], testified that the Appellant always finds issues with his caregivers and has had about seven homemakers assigned through [REDACTED]. The agency had offered to send a male care provider into the home because it cannot keep females in the position. She believes the Appellant has no capacity issues that would keep him from understanding policies. Ms. [REDACTED] testified that no care provider in the area will accept the Appellant as a client.
- 5) [REDACTED], Nurse Consultant with [REDACTED], testified that most workers have not stayed in the Appellant's home for more than four or five days. Ms. [REDACTED] stated that the Appellant's mother also complained about the care providers. Ms. [REDACTED] indicated that she had asked the Appellant if he personally knew someone he would want to serve as his provider to fulfill his Plan of Care, but the Appellant did not know anyone who could serve in that capacity. She stated that all available staff members have now been exhausted. At one point, Ms. [REDACTED] contended that the Appellant threatened to commit suicide and the agency contacted Adult Protective Services about his situation.

- 6) Exhibit D-4 includes the following information about specific homemakers sent to the Appellant's residence:

██████ Worked five days and Appellant reported he no longer wanted her in the home because she had no driver's license, although she was reportedly working on obtaining a license.

██████ Worked four days, after which the Appellant sent her home because "she was lazy."

██████ Worked for several days, but then became ill and was off work for a period of time. When she returned the next month, the Appellant refused to let her work.

██████ Worked for several weeks, but was eventually sent home because the Appellant felt that she had too many personal issues.

This document indicates that the Appellant refused to accept two workers available in May 2016 because they could only cover a portion of his service hours, and that the Appellant refused to accept a male care provider.

Exhibit D-4 also contains logs and progress notes detailing the Appellant's contacts with staff and efforts made to find care provider placements in his home.

- 7) The Appellant testified that he never "fired" his workers or threatened to commit suicide. He provided Exhibit A-1, which includes information he documented about the care providers in his home. The documentation states that ██████ arrived at his home late and left early, and was dropped off because she had no car. The Appellant contended that ██████ quit because she said she was going to work for another company. The Appellant indicated that ██████ told him she was going to quit because she was planning to move to take care of her mother. He alleged that ██████ was searching for pills, found out he had no pain pills, and then never returned. The Appellant noted that ██████ stayed on her cell phone, left early for job interviews, and left without telling him she was leaving for the day. In addition, he alleged that ██████ started a conversation with him about sex and made him uncomfortable. The Appellant indicated that ██████ stayed outside smoking and talking on her cell phone, and told him that she was going to quit due to personal issues.

The Appellant contended that his property - including his washing machine - has been vandalized by care providers. He alleged that someone spilled water in his breaker box and damaged his hot water heater. In addition, he contended that water was poured into the back of his computer and television set, and that a worker stomped the vents in his floors until they broke.

The Appellant alleged that he has serious medical problems, is being "set up" by the agency, and that the issues should not be one-sided.

██████████, the Appellant's mother, testified that she had to complete some of the work that should have been done by the homemakers.

### **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that services can be discontinued 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 a Service Plan. Information provided by the Department reveals that the Appellant has had numerous care providers in his home, but sends them away after brief periods of time. As the Appellant will not allow care providers to stay in the home for any length of time – and the agencies in his area refuse to accept him as a client - homemaker services provided through the Aged/Disabled Waiver Program cannot be fulfilled. 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 31st Day of August 2016.**

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