



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
416 Adams St.
Fairmont, WV 26554**

**Earl Ray Tomblin
Governor**

**Karen L. Bowling
Cabinet Secretary**

October 5, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 16-BOR-2467

Dear [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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Tammy Grueser, RN, BoSS/Jody Goff, RN, Lifetime Management Services

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2467

**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 October 4, 2016, on an appeal filed August 9, 2016.

The matter before the Hearing Officer arises from the July 18, 2016 decision by the Respondent to discontinue the Appellant's Medicaid Aged and Disabled Waiver 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 Case Manager, ██████████ and ██████████ RN, ██████████. The Appellant appeared pro se, and testified on his own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Medicaid Aged & Disabled Waiver Services Manual §§501.29 and 501.34
- D-2 Discontinuation notice dated 7/18/16
- D-3 PCA/HMK Notes dated 7/14/16
- D-4 PCA/HMK Notes dated 7/15/16
- D-5 Type-written summary drafted by ██████████ RN, of a meeting she conducted on 7/15/16 with the Appellant and ██████████ RN Case Manager
- D-6 Supporting documentation, including historical documentation from Appellant's previous in-home care provider (██████████)

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 July 18, 2016, Appellant was notified (D-2) that his Medicaid Aged and Disabled Waiver (ADW) Program services were being discontinued due to non-compliance and an unsafe environment.
- 2) Appellant was receiving in-home care services from [REDACTED] ([REDACTED]) until December 2014, when that agency determined it could no longer provide his care. Information included in Exhibit D-6 reveals that Appellant had gone through 13 caregivers in 2013 and 2014 - none of whom would return to Appellant's home.
- 3) A West Virginia Incident Management System report (see Exhibit D-6) completed by [REDACTED] on December 22, 2014, reveals that a caregiver reported she did not feel comfortable in Appellant's home. The report indicates Appellant had made inappropriate sexual comments and was trying to touch her. It was further reported that Appellant advised his caregiver that she could come to work naked as long as she was comfortable with it. This report notes that [REDACTED] had two (2) sexual harassment reports in less than a week, and because they had no other caregivers to send to the Appellant's home, it was in the best interest of the agency to transfer Appellant to another agency.
- 4) Appellant began receiving in-home care through [REDACTED] in January 2015.
- 5) When ADW services were terminated in July 2016, [REDACTED] had no fewer than 25 different caregivers (see Exhibit D-6) who refused to return to the Appellant's home due to allegations of verbal, physical and sexual abuse.
- 6) Allegations by [REDACTED] caregivers (Exhibits D-3, D-4 and D-5) include reports that the Appellant was rude, difficult, and that he routinely cursed at caregivers using vulgar words - calling one caregiver a "fucking idiot." One caregiver reported that he smacked her on the butt every time she came in and told her that her "ass was firm," and she also reported that he pulled her hair and slapped her on the back of the head. Another caregiver reported that the Appellant told her she should bring a change of clothes in case they got into something sticky (Exhibit D-4), and stated that he would make it a point to follow her in his house and then pretend to run into her so he could grab her butt or brush against her front.
- 7) Appellant denied that he had been physically or sexually abusive to his caregivers, but acknowledged that he has a short temper, anger issues, and a problem with raising his voice and using foul language.

APPLICABLE POLICY

Pursuant to policy §501.29 of the Medicaid Aged and Disabled Waiver Policy Manual (D-1), benefit recipients' responsibilities include maintaining a safe home environment for all service providers.

Aged and Disabled Waiver Policy Manual §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, the person receiving ADW services, or other household members, repeatedly demonstrating sexually inappropriate behaviors, or displaying verbally abusive and/or physically abusive behaviors.

DISCUSSION

The question to be decided is whether the Respondent was correct, by a preponderance of the evidence, to terminate the Appellant's Medicaid Aged and Disabled Waiver Program benefits due to non-compliance and an unsafe environment.

Policy provides that Aged and Disabled Waiver Services can be discontinued when an individual is not compliant with his plan of care, or provides an unsafe environment for care providers working in the home.

Evidence submitted at the hearing reveals that there have been numerous reports of the Appellant demonstrating sexually inappropriate behaviors, which include explicit conversations as well as inappropriate touching. In addition, Appellant has been verbally abusive toward caregivers to the point that homemaker agencies are unable to find any caregivers willing to return to his home, and one caregiver reported the Appellant was physically abusive to her. The Appellant acknowledged that he has anger issues and that he has raised his voice and used foul language toward caregivers, but insists he is not the bad person portrayed by Respondent.

The facts of this case, however, confirm the Appellant has demonstrated a pattern of abusive behaviors - sexual, verbal and physical - and demonstrates that he cannot comply with his plan of care or provide a safe environment for caregivers in his home.

CONCLUSIONS OF LAW

- 1) The Appellant failed to maintain a safe environment for all service providers and comply with his plan of care.

- 2) Pursuant to ADW Program regulations, Respondent acted correctly in discontinuing Appellant's services provided through the Medicaid Aged and Disabled Waiver Program due to an unsafe environment.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's action to discontinue the Appellant's services through the Medicaid Aged and Disabled Waiver Program.

ENTERED this ____ Day of October 2016.

**Thomas E. Arnett
State Hearing Officer**