



**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**

October 14, 2016

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 16-BOR-2652

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,

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

Encl: Appellant'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-2652**

**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 12, 2016, on an appeal filed September 7, 2016.

The matter before the Hearing Officer arises from the August 25, 2016 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance/duplication of services.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Susie Layne, Program Manager, Personal Options Program, Bureau of Senior Services. The Appellant was represented by his sister/attorney-in-fact ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged & Disabled Waiver Services Manual Policy Sections 501.24, 501.25 and 508.12
- D-2 Aged & Disabled Waiver Notice of Discontinuation of Services dated August 25, 2016, discontinuation notice dated August 26, 2016, and electronic mail transmission between Susie Layne and ██████████
- D-3 Aged and Disabled Waiver-Service Plan for August 2016
- D-4 Plan of Care
- D-5 Aged and Disabled Waiver-Service Plan for August 2016
- D-6 Aged and Disabled Waiver Program Medical Necessity Evaluation Request dated May 3, 2016, and PAS Summary dated August 2, 2016
- D-7 Aged and Disabled Waiver Program Medical Necessity Evaluation Request dated April 13, 2015, and PAS Summary dated July 10, 2015

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 August 26, 2016, the Respondent issued notice (D-2) to the Appellant, informing him of its proposal to discontinue services under the Aged/Disabled Waiver Medicaid Program due to 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 the Department learned he was receiving duplicate services from the Veterans Administration and the Aged/Disabled Waiver Program. Ms. Grueser indicated that the Appellant was qualified for a Level "B" Level of Care under the Aged/Disabled Waiver Program (62 to 93 hours per month of homemaker services). As a result of the duplication of services, the Appellant was receiving a total of nine hours of care per day between the Aged/Disabled Waiver and Personal Care Programs (see Exhibits D-3, D-4 and D-5).
- 3) [REDACTED], the Appellant's sister/attorney-in-fact, testified that she had been unaware that dual services were prohibited. She stated that she would not have allowed the services if she had been aware of the policy. [REDACTED] testified that she now understands the policy concerning the prohibition of dual services and does not dispute that the Appellant was receiving the care. She indicated that she would prefer for the Appellant to keep Aged/Disabled Waiver services and discontinue his care through the Veterans Administration.

### **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Waiver Policy Manual Section 501.34 states that services can be discontinued when a member is non-compliant with program guidelines.

Section 501.24 of the Manual states that a person must be receiving the maximum hours provided in Level of Care "D" in order to receive dual services through the Aged/Disabled Waiver and Personal Care Programs.

Section 501.25 states that individuals who have been determined eligible for the Aged/Disabled Waiver Program may receive services from a home health agency that do not duplicate ADW services.

Section 508.12 states that home health agency providers must determine whether Medicaid-eligible members referred for home health agency services are authorized to receive similar services under other Medicaid programs or benefits. Home health agency providers must

coordinate the provision of home health agency services with other Medicaid service providers in order to avoid duplication of similar services and subsequent disallowance of payments.

### **DISCUSSION**

Policy states that Aged/Disabled Waiver services can be discontinued when an individual is non-compliant with program guidelines. Policy states that individuals – with the exception of those who have been identified as eligible for a Level “D” Level of Care – are ineligible to receive duplicate services through the Aged/Disabled Waiver and Personal Care Programs.

As the Appellant has been determined eligible for a Level “B” Level of Care under the Aged/Disabled Waiver Program, he is prohibited by policy from receiving a dual provision of services. Therefore, the Department acted correctly in proposing discontinuation of the Appellant’s Aged/Disabled Waiver Program 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 14th Day of October 2016.**

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**Pamela L. Hinzman  
State Hearing Officer**