



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
203 East Third Avenue  
Williamson, WV 25661**

**Jim Justice  
Governor**

**Bill J. Crouch  
Cabinet Secretary**

April 28, 2017



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 17-BOR-1215

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,

Stephen M. Baisden  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra R. Grueser, RN, WV Bureau of Senior Services  
[REDACTED], RN, [REDACTED]

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

██████████,

**Appellant,**

**v.**

**ACTION NO.: 17-BOR-1215**

**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 April 26, 2017, on an appeal filed February 10, 2017.

The matter before the Hearing Officer arises from the January 23, 2017, decision by the Respondent to discontinue the Appellant's participation in the Aged and Disabled Waiver (ADW) Program for non-compliance with ADW Program policy.

At the hearing, the Respondent appeared by Tamra R. Grueser, RN, WV Bureau of Senior Services (WV BoSS). Appearing as a witness for the Department was ██████████, RN, from the ██████████. The Appellant appeared by her representative and husband ██████████. All participants were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged and Disabled Waiver Services Policy Manual, §§501.29 and 501.34
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service, dated January 19, 2017
- D-3 Letter from Department to Appellant, dated January 23, 2017
- D-4 Telephone Complaint and attached documentation from ██████████, ██████████ WV, date of initial complaint December 28, 2016
- D-5 WV Aged and Disabled Waiver Program Personal Attendant Log for December 26, 2016 through January 6, 2017

**Appellant's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence, 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 January 19, 2017, the [REDACTED] (hereinafter the [REDACTED] Commission), the Appellant's home health agency, submitted to the WV Bureau of Senior Services (WV BoSS) a Request for Discontinuation of Services form (Exhibit D-2) regarding the Appellant, a participant in the Aged and Disabled Waiver (ADW) Program. The form indicated that the reason for the request was "Participant non-compliance with program."
- 2) According to documentation attached to the discontinuation request (Exhibit D-4), on December 28, 2016, the [REDACTED] Commission received an anonymous complaint that the Appellant permitted her home health worker to be paid through the Aged and Disabled Waiver program for taking care of her dog while she was away from her home on vacation.
- 3) The WV BoSS discontinued the Appellant from the ADW Program for persistent non-compliance with program policy. The WV BoSS informed the Appellant of its decision by letter dated January 23, 2017 (Exhibit D-3).
- 4) The Appellant requested a fair hearing to protest her discontinuation of services through the ADW Program.

### **APPLICABLE POLICY**

The WV Bureau of Medical Services (BMS) Aged and Disabled Waiver Policy Manual §501.34 reads as follows regarding discontinuation of services requests:

The following require a Request for Discontinuation of Services Form:

- A. No Personal Attendant services have been provided for 180 continuous days – example, an extended placement in long-term care or rehabilitation facility.
- B. Unsafe Environment – an unsafe environment is one in which the 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 following circumstances:
  - a. The person receiving ADW services or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a Personal Attendant or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals

or verbal threats to harm the Personal Attendant and/or other agency staff.

- b. The person or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
- c. The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures.
- C. The person is persistently non-compliant with the Service Plan.
- D. The person no longer desires services.
- E. The person no longer requires services.
- F. The person can no longer be safely maintained in the community.

The OA will review all requests for a discontinuation of services. If it is an appropriate request, and the OA approves the discontinuation, the OA will send notification of discontinuation of services to the person (or legal representative) with a copy to the Case Management Agency or F/EA [Fiscal/Employer Agent]. Fair hearing rights will also be provided except if the person (or legal representative) no longer desires services.

The WV Bureau of Medical Services (BMS) Aged and Disabled Waiver Policy Manual §501.29 reads as follows regarding ADW members' rights and responsibilities:

At a minimum, Case Management agencies or Resource Consultants, as applicable, must communicate in writing including accessible format as requested to each person (and/or their legal representative) receiving ADW services initially, upon admission to the agency (transfer) and annually the following:

Their right to:

- A. Transfer to a different provider agency or to *Personal Options*;
- B. Address dissatisfaction with services with the provider agency or the *Personal Options* agency;
- C. Access the West Virginia DHHR Fair Hearing process;
- D. Freedom from retribution when expressing dissatisfaction with services or appealing service decisions;
- E. Considerate and respectful care from their provider(s);
- F. Freedom from abuse, neglect and exploitation;
- G. Participation in a person-centered planning and service delivery process;
- H. Confidentiality regarding ADW services;
- I. Access to all of their files maintained by agency providers and/or the F/EA;

And their responsibility to:

- A. Notify the ADW Personal Attendant Agency within 24 hours prior to the day services are to be provided if services are not needed;
- B. To notify providers and/or Resource Consultant promptly of changes in Medicaid coverage;
- C. Comply with the agreed upon Person-Centered Service Plan;
- D. Cooperate with all scheduled in-home visits;

- E. Notify the ADW providers and/or Resource Consultant of a change in residence or an admission to a hospital, nursing home or other facility;
- F. Notify the ADW providers and/or Resource Consultant of any change of medical status or direct care need;
- G. Maintain a safe home environment for all service providers;
- H. Verify services were provided by initialing and signing the Personal Attendant Log;
- I. Communicate any problems with services to the provider agency and/or the Resource Consultant for *Personal Options*;
- J. Report any suspected fraud to the provider agency, Resource Consultant or the Medicaid Fraud Unit at (304)558-1858;
- K. Report any incidents of abuse, neglect, or exploitation to the provider agency, the Resource Consultant or the WV Centralized Intake hotline at 1-800-352-6513;
- L. Report any suspected illegal activity of staff to their local police department or appropriate authority as well as the provider agency and/or Resource Consultant;
- M. Notify Case Manager and Resource Consultant, if applicable, of any changes in their legal representation and/or guardianship and provide copies of the appropriate documentation;
- N. Utilize Non-Medical Transportation support from family, friends, neighbors, and community agencies that can provide transportation;
- O. Not ask Personal Attendants to provide services that are excluded by policy or not on their Service Plan;
- P. Notify their Resource Consultant (if utilizing the *Personal Options* Model) within 24 hours when they terminate an employee;

### **DISCUSSION**

On December 28, 2016, the Appellant's home health agency, the [REDACTED] Commission, received an anonymous report stating that the Appellant had gone out of town and permitted her home health worker to be paid for keeping her dog. According to the Department's representative, this violates several member responsibilities listed in the Policy section above.

On December 30, representatives from the [REDACTED] Commission made an unannounced visit to the Appellant's home and found it unoccupied. After this, the Appellant's home health worker submitted a time sheet for the work dates of December 26 through 30, 2016 (Exhibit D-1) indicating she provided in-home care for the Appellant for each of those dates.

The Appellant's representative, her husband, testified that he had video recording from his personal security camera showing the [REDACTED] Commission representatives only knocked on the door for "about two minutes" which he stated was not enough time for them to ascertain whether anyone was home. He stated his wife was home in the shower when the representatives came to the home, and they left before she was able to answer the door. The Appellant's representative stated that he and his wife did leave for vacation on December 30, 2016, but they

took the dog with them. The Appellant's representative did not provide a copy of the security camera video recording, nor did he provide evidence or testimony to support his position that he, the Appellant and their dog left their home on December 30.

The ADW Policy Manual at §501.34 states that a request for discontinuation of services is required when the member "is persistently non-compliant" with the ADW service plan. The Department only documented this single incident of non-compliance. However, the Appellant's behavior constitutes a violation of policy found in the Aged and Disabled Waiver (ADW) Policy Manual at §501.29.

This single incident of non-compliance depicts a persistent pattern of non-compliance with ADW Program policy. First, the Appellant did not provide her home health agency with a 24-hour notice that homemaker services were not needed, in violation of §501.29.A. Second, the Appellant's home health worker provided services that were excluded by policy for at least one day and perhaps more, in violation of §501.29.O. Third, the Appellant verified that services were provided when they were not at least one day (December 30) and perhaps more by signing her home health worker's timesheet, in violation of §501.29.H.

The Department has proved by a preponderance of evidence that the Appellant was persistently non-compliant with ADW Program policy.

### **CONCLUSION OF LAW**

The Appellant was persistently non-compliant with her ADW Program policy. The Department acted correctly to discontinue her participation in the ADW program, pursuant to policy found in the Aged and Disabled Waiver Services Policy Manual, §501.29.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department's decision to discontinue the Appellant's participation in the Aged and Disabled Waiver program for non-compliance with ADW Program policy.

**ENTERED this 28<sup>th</sup> Day of April 2017.**

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**Stephen M. Baisden**  
**State Hearing Officer**