

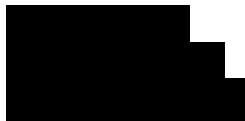


**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241**

**Jim Justice  
Governor**

**Bill J. Crouch  
Cabinet Secretary**

August 18, 2017



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 17-BOR-1872

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: 17-BOR-1872**

**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 16, 2017, on an appeal filed May 24, 2017.

The matter before the Hearing Officer arises from the April 5, 2017 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance/unsafe environment.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was ██████████, Assistant Director, ██████████. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, Appellant's son. 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 3, 2017 and supporting documentation
- D-3 West Virginia Incident Management System information
- D-4 Discontinuation notice dated April 5, 2017

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 5, 2017, the Respondent issued notice (D-4) to the Appellant, informing her of its decision to discontinue services under the Aged/Disabled Waiver Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) The Appellant's benefits were discontinued after her Personal Assistant, [REDACTED] of [REDACTED], reported that the Appellant's son, [REDACTED], became verbally abusive to her on March 31, 2017.
- 3) Ms. [REDACTED] provided a written statement to the homemaker agency (D-2), indicating that the incident occurred after Mr. [REDACTED] asked her to ride to [REDACTED] with him to pick up the Appellant's medication. She stated that she was uncomfortable getting into a car with Mr. [REDACTED] because he was a stranger, and she was informed by her supervisor that she could not go with Mr. [REDACTED] because she could not leave the Appellant unattended. Ms. [REDACTED] reportedly offered to transport the Appellant to [REDACTED] to obtain the medication; however, Mr. [REDACTED] reportedly told her that he did not trust her to pick it up at the store. Mr. [REDACTED] then began to curse at Ms. [REDACTED] stating, "I fucking asked you to do something.. Now you do it now for my mom." In addition, Mr. [REDACTED] reportedly said, "You don't do that shit (regarding calling the office). You do what I fucking say for my mom." Ms. [REDACTED] attempted to explain that she could not leave the Appellant, and Mr. [REDACTED] continued to curse at her. Mr. [REDACTED] stated that the homemaker agency never sends anyone to check on the home "so what is the big fucking deal." At that point, Mr. [REDACTED] girlfriend also began to yell at Ms. [REDACTED] and called her "ridiculous" because she would not obey Mr. [REDACTED]. Mr. [REDACTED] then demanded that the Appellant go with him to get the medication, leaving Ms. [REDACTED] at the residence.
- 4) The Respondent also provided documentation/testimony (D-2) to indicate that the homemaker agency had sent five other personal assistants to the Appellant's home, some of whom suspected drug abuse in the home and witnessed fighting between Mr. [REDACTED] and his girlfriend. The Appellant reportedly asked two of the personal assistants not to return to the home. The Respondent clarified that drug abuse was not confirmed.
- 5) As a result of information provided by the personal assistants, the homemaker agency felt it was unsafe to send another employee into the Appellant's home.
- 6) [REDACTED] testified that two of his mother's former personal assistants left employment with the agency to take different jobs, and two were asked to leave by his family due to alleged stealing and suspicious behavior. Mr. [REDACTED] did not deny the confrontation with Ms. [REDACTED] but indicated that he provides care for his ailing father and becomes frustrated. He also confirmed that he and his girlfriend had argued, but they were behind closed doors in a bedroom when the argument took place. Mr. [REDACTED] contended that Ms. [REDACTED] told him he could ride with her to [REDACTED] so he did not believe she had issues with him being a stranger.

### **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. Reports of an unsafe home environment can result in the immediate closure of services.

### **DISCUSSION**

Policy states that Aged/Disabled Waiver Services can be immediately discontinued when an individual provides an unsafe or threatening environment for care providers working in the home. The Respondent provided credible evidence that the Appellant's son verbally abused a personal assistant who was providing care for his mother. Mr. [REDACTED] indicated that he had been experiencing frustration in caring for his father, and did not deny that the confrontation/verbal abuse occurred.

As the Case Management Agency had legitimate concerns about the safety of its employees in the Appellant's home, the Respondent acted correctly in discontinuing the Appellant's Aged/Disabled Waiver Services.

### **CONCLUSION OF LAW**

The Respondent acted correctly in discontinuing the Appellant's services under the Aged/Disabled Waiver Medicaid Program.

### **DECISION**

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

**ENTERED this 18<sup>th</sup> Day of August 2017.**

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