



**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**

October 4, 2017

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2275

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: 17-BOR-2275

**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 September 26, 2017, on an appeal filed August 10, 2017.

The matter before the Hearing Officer arises from the July 25, 2017 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on non-compliance/providing an unsafe work 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*, assisted by ██████████, Case Manager, ██████████. 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 July 25, 2017 and supporting documentation
- D-3 Aged & Disabled Waiver Program Participant Request to Transfer dated July 21, 2017
- D-4 Discontinuation notice dated July 25, 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 July 25, 2017, the Respondent issued notice (D-4) to the Appellant, informing him of its decision to discontinue services under the Aged/Disabled Waiver (ADW) Medicaid Program due to non-compliance with program guidelines and an unsafe environment.
- 2) The Appellant's benefits were discontinued after several personal assistants assigned to his care complained that the Appellant had allegedly made inappropriate sexual comments to them.
- 3) The Respondent provided several written statements from personal assistants (D-3), documenting the allegations, as well as information concerning [REDACTED] attempts to allow the Appellant to correct his behavior with a Behavior Plan.
- 4) A written statement from Personal Attendant [REDACTED] dated October 5, 2016 (D-3) alleges that the Appellant told Ms. [REDACTED] explicit details about a sexual encounter he had with a woman several years earlier. Despite Ms. [REDACTED] request that he stop talking about the encounter, the Appellant allegedly attempted to tell her the same story the next day. On October 5, 2016, the Appellant allegedly asked Ms. [REDACTED] if her could "feel all over her body" because it "would make him feel good."
- 5) A November 15, 2016 entry on the Appellant's Aged/Disabled Waiver Log (D-3) states that Personal Attendant [REDACTED] alleged that the Appellant continued to make sexual comments to her even after she told him it was inappropriate.
- 6) A written statement from Personal Attendant [REDACTED] dated December 29, 2016 (D-3) states that the Appellant had approached her "like he was going to kiss me." Ms. [REDACTED] indicated that she pushed the Appellant away and told him "I was not there for that." When Ms. [REDACTED] attempted to work for the Appellant again, he "still said dirty things to me."
- 7) A written statement from Personal Attendant [REDACTED] dated April 6, 2017 alleges that the Appellant asked to see Ms. [REDACTED] breasts, and wanted Ms. [REDACTED] to talk about her sex life with her husband. The Appellant also indicated that he wanted to perform oral sex on Ms. [REDACTED]
- 8) Personal Attendant [REDACTED] provided a written statement on July 24, 2017, alleging that the Appellant told her, "I can see the outline of your titties in that shirt." He went on to describe a dream he had about Ms. [REDACTED] in which she had a baby, and hospital staff had "shaved her." Ms. [REDACTED] indicated that the Appellant said he wanted to touch her belly, which made her feel uncomfortable. He allegedly touched her stomach later while she was ordering food with him at a fast food restaurant drive-thru, and Ms. [REDACTED] asked the Appellant not to touch her.

- 9) On July 25, 2017, Personal Attendant [REDACTED] provided a written statement, alleging that the Appellant asked her whether anyone had “used a straw” on her, whether her boyfriend performed oral sex on her, and whether her boyfriend “had a big one.” Ms. [REDACTED] reportedly told the Appellant she did not wish to talk about those things, but the Appellant then asked her if she had a sex toy and said he would like to use a sex toy on her. Later, the Appellant allegedly brought out the sex toy, and exposed his penis to Ms. [REDACTED]
- 10) Information on the Appellant’s Aged/Disabled Waiver Log (D-3) states that representatives with the homemaker agency visited the Appellant in October 2016, and explained to the Appellant that sexual conversations with Personal Attendants were inappropriate. The Appellant signed a Behavior Contract on October 6, 2016, acknowledging that if he continued to engage in sexually inappropriate behavior he would be discharged from the ADW Program. Homemaker agency representatives visited the Appellant again on December 29, 2016 concerning inappropriate sexual behavior, and made a third home visit to the Appellant’s residence to discuss the issue on April 4, 2017.
- 11) The Appellant denied the allegations during the hearing.

APPLICABLE POLICY

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 (D-1) states that 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 times when the person receiving ADW services repeatedly demonstrates sexually inappropriate behavior. ADW services may be discontinued immediately if the situation results in an unsafe environment for care providers.

DISCUSSION

Policy states that Aged/Disabled Waiver Services can be immediately discontinued when an individual provides an unsafe environment for care providers working in the home. The Respondent provided credible evidence that the Appellant made sexually graphic comments to six Personal Assistants assigned to work in his home. In addition, he engaged in unwanted physical touching with some of the attendants.

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 4th Day of October 2017.

**Pamela L. Hinzman
State Hearing Officer**