



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801**

**Jolynn Marra
Interim Inspector General**

June 4, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.:19-BOR-1576

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Bureau of Senior Services

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

██████████,

Appellant,

v.

Action Number: 19-BOR-1576

**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 May 21, 2019, on an appeal filed April 15, 2019.

The matter before the Hearing Officer arises from the March 29, 2019 decision by the Respondent to discontinue the Appellant's services under the Aged and Disabled Waiver Program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services. Appearing as witnesses for the Respondent were ██████████, Case Manager; ██████████, RN; and ██████████, Staffing Coordinator with ██████████. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services Provider Manual Chapter 501, pages 5 and 6
- D-2 Request for Discontinuation of Services dated March 15, 2019
- D-3 Notice of Discontinuation dated March 29, 2019
- D-4 Screen Print of Billed Medicaid Expenses from December 2018 through March 2019
- D-5 Service Recording Log for January 2018 and February through April 2019, Communication Log for March 14, 2019, Personal Attendant Log for February 2019, Timesheet Verification for March 2019, Case Management Monthly Contact Form dated February 28, 2019, Paystubs and Work Schedule from ██████████ for December 2017 and January 2018

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) The Appellant was a recipient of services under the Aged and Disabled Waiver Program.
- 2) In January 2018, the Appellant was not home for a scheduled home visit with her case management agency, [REDACTED] ([REDACTED]) (Exhibit D-5).
- 3) [REDACTED] discovered the Appellant was working at [REDACTED] during the hours she was scheduled for personal attendant services (Exhibit D-5).
- 4) The Appellant signed falsified personal attendant time sheets attesting that she received personal attendant services in the morning, when she was working at [REDACTED] (Exhibit D-5).
- 5) On February 28, 2019, the staffing coordinator with [REDACTED], [REDACTED], notified the Appellant's case manager that the Appellant had refused personal attendant services since February 15, 2019.
- 6) Case Manager [REDACTED] contacted the Appellant on February 28, 2019, and was advised by the Appellant she did not need a personal attendant on those days (Exhibit D-5).
- 7) [REDACTED], RN with [REDACTED] verified with [REDACTED] that the Appellant was working for their company again (Exhibit D-5).
- 8) On March 15, 2019, Ms. [REDACTED] notified Ms. [REDACTED] that attempts to staff the Appellant with a personal attendant had been unsuccessful and the Appellant had not returned her phone calls regarding refusal of services (Exhibit D-5).
- 9) [REDACTED] requested a discontinuation of the Appellant's services on March 15, 2019, due to non-compliance with the program (Exhibit D-2).
- 10) The Respondent notified the Appellant on March 29, 2019, that her Aged and Disabled Waiver services were being discontinued due to persistent non-compliance and no personal attendant services for over thirty (30) days (Exhibit D-3).

APPLICABLE POLICY

Bureau for Medical Services Provider Manual Chapter 501 - *Program Description* - states that a member on the ADW must receive personal attendant services on a monthly basis, unless temporarily in a nursing home, hospital, or other inpatient medical facility.

Bureau for Medical Services Provider Manual §501.34 – *Discontinuation of Services* – states the following require a Request for Discontinuation of Services Form:

- No personal attendant services have been provided for 180 continuous days – example, an extended placement in long-term care or rehabilitation facility.
- 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: 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.
- The person is persistently non-compliant with the Service Plan.
- The person no longer desires services.
- The person no longer requires services.
- The person can no longer be safely maintained in the community

DISCUSSION

Policy stipulates that Aged and Disabled Waiver services may be discontinued if an individual is persistently non-compliant with the service plan.

The Appellant's case management agency requested case closure in March 2019 when attempts to staff the Appellant with a personal attendant had been unsuccessful and a loss of contact with the Appellant occurred.

The Respondent contended that the Appellant last received personal attendant services on February 15, 2019. On several occasions, a personal attendant arrived at the Appellant's residence to discover that the Appellant was not home. Documentation from the case management agency noted attempts to contact the Appellant by telephone to discuss the loss of services, only to be told by a male individual that the Appellant was not home. The Respondent purported that the Appellant did not make contact with the case management agency until after the receipt of the notice of discontinuation of services.

The Appellant argued that she was always home during her scheduled personal attendant service hours and that it was the personal attendant that often did not show up. The Appellant testified that her personal attendant, [REDACTED], had requested that her hours be changed to the afternoon, to which she

agreed. The Appellant stated that after being hospitalized on March 23, 2019, she moved in with her daughter, and insisted that [REDACTED] was aware of her change of address and telephone number.

The Respondent established a pattern of non-compliance on the Appellant's part during the previous two (2) years, when she obtained seasonal employment with [REDACTED], and was unavailable for scheduled personal attendant services. Although employment is not prohibited as a recipient of Aged and Disabled Waiver services, the Appellant failed to report the employment to her case management agency and the need to alter her personal attendant schedule or report her change in address and contact information. Furthermore, the Appellant admitted to signing time sheets that did not reflect the correct times she received personal attendant services.

Whereas the Appellant has been non-compliant with her service plan under the Aged and Disabled Waiver program, the Respondent correctly discontinued her services.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, Aged and Disabled Waiver services may be discontinued if an individual is persistently non-compliant with the service plan.
- 2) The Appellant has been persistently non-compliant by failing to report a change in personal attendant hours and failing to report days when personal attendant services were not needed.
- 3) The Respondent correctly discontinued the Appellant's services under the Aged and Disabled Waiver program.

DECISION

It is the decision of the State Hearing Officer to uphold the decision of the Respondent to discontinue the Appellant's services under the Aged and Disabled Waiver program.

ENTERED this 4th day of June 2019.

**Kristi Logan
State Hearing Officer**