



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
Board of Review  
PO Box 1247  
433 Mid Atlantic Parkway  
Martinsburg, West Virginia 25402

Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Interim Inspector General

June 11, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 19-BOR-1686

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,

Lori Woodward  
State Hearing Officer  
Member, State Board of Review

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

cc: Tamra Grueser, RN, BoSS

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

[REDACTED],  
**Appellant,**

**v.**

**Action Number: 19-BOR-1686**

**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 [REDACTED]. 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 June 5, 2019, on a timely appeal filed May 1, 2019.

The matter before the Hearing Officer arises from the Respondent's decision to terminate the Appellant's Aged/Disabled Waiver program benefits as noticed in the letter dated April 24, 2019.

At the hearing the Respondent appeared by Tamra Grueser, RN with the Bureau of Senior Services (BoSS). Appearing as a witness for the Respondent was [REDACTED], RN, case manager with [REDACTED]. The Appellant was present at the hearing but was presented by [REDACTED], nursing assistant and friend. All witnesses were sworn, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Bureau for Medical Services, Aged and Disabled Home and Community Based Waiver Policy Manual §501.34
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service dated April 12, 2019; Aged and Disabled Waiver Log dated April 4, 2019; undated, unlabeled, unsigned typed notes; Adult Protective Services Mandatory Reporting Form
- D-3 [REDACTED] Behavioral Contract signed and dated October 30, 2015; Recording Log
- D-4 Electronic mail correspondence from [REDACTED] dated April 17, 2019

- D-5 Transfer Record for ADW Services; Aged and Disabled Waiver Program Participant Request to Transfer dated April 4, 2019; West Virginia Medicaid Aged and Disabled Waiver Program Case Management Agency Selection Form dated April 4, 2019
- D-6 Electronic Mail correspondence from [REDACTED] dated April 22, 2019; Broadcast Report with closure notice to [REDACTED] dated April 24, 2019
- D-7 JCCOA Incident Reporting Form A dated June 27, 2018; [REDACTED] Incident/Unusual Occurrence Report dated March 9, 2011
- D-8 Aged and Disabled Waiver-Person Centered Assessment dated November 26, 2018; Aged and Disabled Waiver-Medication Profile dated November 26, 2018; Aged and Disabled Waiver-Person Centered Assessment dated August 28, 2018; Aged and Disabled Waiver-Service Plan; Aged and Disabled Waiver-Medication Profile dated August 28, 2018
- D-9 JCCOA FAX cover sheet dated May 29, 2019; RN Skilled Nursing Visit dated April 8, 2019

**Appellant's Exhibits:**

None

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 had been a participant in the Aged/Disabled Waiver Program (ADW), receiving home health nursing services from RN [REDACTED] with [REDACTED].
- 2) On April 9, 2019, RN [REDACTED] reported that the Appellant became angry when questioned about his pain medication, lifted his pillow exposing three (3) guns and pointed a 9 MM Glock at her threatening to use it. (Exhibits D-2 and D-9).
- 3) It is undisputed that the Appellant was agitated at RN [REDACTED] on April 9, 2019.
- 4) Although the type of guns are in dispute, the fact that the Appellant kept three (3) guns under his pillow was not in dispute.
- 5) On April 12, 2019, RN [REDACTED] filed a Request for Discontinuation of Service based upon unsafe environment which included Aged and Disabled Waiver Log dated April 4, 2019 and an Adult Protective Services Mandatory Reporting Form along with a typewritten account of the incident. (Exhibit D-2)
- 6) The Respondent sent notification on April 24, 2019 to the Appellant that his ADW program benefits were being terminated due to an unsafe environment. (Exhibit D-6)

## **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual (ADW policy) §501.34, *Discontinuation of Services*, required 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 or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.

The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures. This can be found at: <http://www.dhhr.wv.gov/bms/Programs/WaiverPrograms/ADWProgram/Pages/ADW-Manuals-and-Forms.aspx>.

- 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.

The Request for Discontinuation of Services form must be uploaded into the UMC's web portal and a notification is sent to the OA that it has been uploaded. 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 FE/A). Fair hearing rights will also be provided except if the person (or legal representative) no longer desires services. The effective date for the discontinuation of services is thirteen calendar days after the date of the OA notification letter, if the person (or legal representative) does not request a hearing.

If it is an unsafe environment, services may be discontinued immediately upon approval of the OA, and all applicable entities are notified, i.e. police, Adult Protective Services.

When the OA receives an unsafe closure request, they will review and make a recommendation to BMS based upon the evidence submitted. Documentation to support the unsafe environment should come from multiple sources if possible, i.e., the personal attendant agency and the case management agency. Recommendations include:

- Suspend services for up to ninety days to allow the person receiving ADW services time to remedy the situation. The case manager will reassess at 30, 60 and 90 days and make a recommendation to the OA at any time during the 90 days suspension to reinstate services.

- Immediate closure.

It is the case management agency's responsibility to monitor the health and safety of the person receiving services during any time that services are suspended. In all cases, the person receiving services must be provided their right to a Fair Hearing by the OA. However, due to the nature of unsafe environment closure, the person is not eligible for the option to continue existing services during the fair hearing process.

### **DISCUSSION**

The Appellant was receiving ADW benefits and received home health nursing services from [REDACTED] RN [REDACTED]. The Respondent's witness, RN [REDACTED] case manager, testified that RN [REDACTED] reported to her that on April 4, 2019 the Appellant had 89 or 90 pain pills and that by April 9, 2019, the bottle was empty. When RN [REDACTED] questioned the Appellant about his pain medication, the Appellant became agitated and lifted his pillow showing her three (3) guns. RN [REDACTED] reported that the Appellant pointed a 9 MM Glock at her and threatened to use it. RN [REDACTED] filed a request to terminate the Appellant's ADW benefits on April 12, 2019 based on RN [REDACTED] report and her own home visit wherein the Appellant threatened to "cap" someone's "ass". On April 24, 2019, the Respondent notified the Appellant that his ADW program services were being discontinued based on a finding of an unsafe environment. The Appellant requested a fair hearing on the matter.

At the hearing, the Appellant admitted that he was agitated on April 9, 2019 because RN [REDACTED] was knocking items off of the counter when she was cleaning. He proffered that RN [REDACTED] knocked over his pillow exposing his guns. The Appellant testified that the guns were BB guns, not handguns, and denies pointing a gun at RN [REDACTED]. RN [REDACTED] testified that she had conducted a home visit with the Appellant on April 4, 2019, and that he had mentioned to her about putting a "cap" in someone's "ass", referring to shooting someone. The Appellant did not deny making this statement.

Bureau of Medical Services Policy §501.34 allows for a member's termination from the ADW program due to unsafe environment which includes agency staff being threatened with guns, knives, or other potentially dangerous weapons, and verbal threats to harm agency staff. It is undisputed that the Appellant had guns under his pillow and was agitated at RN [REDACTED] on April 9, 2019. Regardless of whether the guns were handguns or BB guns, they were guns nonetheless and had the potential to cause harm or be perceived as a credible threat of harm. The undisputed fact that the Appellant kept three (3) guns under his pillow in and of itself could be considered a threat. However, along with RN [REDACTED] report that the Appellant had pointed a gun at her and threatened to use it, and RN [REDACTED] testimony regarding the Appellant's earlier statement about threatening to "cap" someone, the Respondent correctly determined an unsafe environment.

### **CONCLUSIONS OF LAW**

- 1) Per policy, ADW program benefits may be discontinued if there is a finding of unsafe environment which puts the welfare of agency staff in jeopardy.

- 2) By keeping three (3) guns under his pillow and threatening to use them, the Appellant created an unsafe environment for agency staff.
- 3) The Respondent correctly terminated the Appellant's ADW program benefits due to unsafe environment.

### **DECISION**

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

**ENTERED this 11<sup>th</sup> day of June 2019.**

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**Lori Woodward, State Hearing Officer**