



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

**Bill J. Crouch  
Cabinet Secretary**

**Jolynn Marra  
Interim Inspector General**

August 2, 2019



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-1984

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: Angela Jennings, WVDHHR

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

██████████,

**Appellant,**

**v.**

**Action Number: 19-BOR-1984**

**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 July 30, 2019, on an appeal filed June 28, 2019.

The matter before the Hearing Officer arises from the June 19, 2019 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services based on the Appellant's request.

At the hearing, the Respondent appeared by Paula Jones, Economic Service Worker, WVDHHR. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was his wife, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Aged and Disabled Waiver Services Manual Policy Section 24.40
- D-2 Aged and Disabled Waiver Case Management Notification of Case Closure dated May 30, 2019
- D-3 Notice of Decision dated June 19, 2019

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 June 19, 2019, the Respondent issued notice to the Appellant informing him of its decision to terminate benefits under the Aged/Disabled Waiver (ADW) Medicaid Program because he requested that the benefit be closed (D-3).
- 2) The Respondent's Economic Services Unit closed the Appellant's case after receiving an Aged and Disabled Waiver Case Management Notification of Case Closure (D-2) from Quality Care Management on May 30, 2019. This notification states that the reason for closure is "participant request."

## **APPLICABLE POLICY**

Aged/Disabled Home and Community-Based Services Waiver Policy Manual Section 501.34 states that 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. This information can be found at: <http://www.dhhr.wv.gov/bms/Programs/WaiverPrograms/ADWProgram/Pages/ADW-Manuals-and-Forms.aspx>

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 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.

### **DISCUSSION**

Policy states that Aged/Disabled Waiver benefits can be discontinued when a person no longer desires services.

The Appellant was notified that his Aged/Disabled Waiver benefits were being terminated based on his own request for case closure. The Appellant testified during the hearing that he did not request that his case be closed, that he only wanted a new caregiver, and that he wishes to continue receiving Aged/Disabled Waiver Medicaid benefits. He stated that he had believed the Case Management Agency was going to send a new worker to assist him. The Appellant's wife testified that her youngest daughter had served as the Appellant's caretaker, and that her daughter and husband did not get along well. Mrs. [REDACTED] stated that she was not present in the home during the day, and that her husband cannot read and has hearing difficulties.

As the Appellant testified that he did not request case closure and wishes to continue receiving Aged/Disabled Waiver services, the Respondent's decision to terminate benefits cannot be affirmed.

### **CONCLUSION OF LAW**

- 1) Policy states that an Aged/Disabled Waiver Medicaid case can be closed when an individual no longer desires services.
- 2) The Appellant testified that he did not request the termination of his Aged/Disabled Waiver Medicaid benefits.
- 3) The Respondent provided no witnesses to dispute the Appellant's contention.
- 4) The Respondent's decision to terminate the Appellant's Aged/Disabled Waiver Medicaid benefits cannot be affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate services through the Aged/Disabled Waiver Medicaid Program.

**ENTERED this 2nd Day of August 2019.**

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**Pamela L. Hinzman  
State Hearing Officer**