



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
State Capitol Complex
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-0955 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

February 22, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 18-BOR-2435

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, Department Representative

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2435

**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 January 9, 2019, on an appeal filed September 24, 2018.

The matter before the Hearing Officer arises from the August 29, 2018 decision by the Respondent to discontinue Aged and Disabled Waiver (ADW) services based on an unsafe environment.

At the hearing, the Respondent appeared by Tamra Grueser. Appearing as witnesses for the Department were Erika Sturm and James Zawada. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was her husband, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | BMS Provider Manual (excerpt)
Chapter 501 Aged and Disabled Waiver (ADW)
§501.34 |
| D-2 | ADW Request for Discontinuation of Service, dated August 7, 2018
Notice of Decision, dated August 29, 2018 |

- D-3 ADW RN Contact Form
ADW Incident Management System documents
Email dated August 9, 2018
- D-4 Written statements from ADW Personal Attendants
Regarding the Appellant and another ADW recipient in the Appellant's home
- D-5 Case Management Agency documentation
- D-6 West Virginia State Police – Sex Offender Registry
Offender Details (screen print)
Date last modified: February 13, 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 Aged and Disabled Waiver (ADW) services.
- 2) By notice dated August 29, 2018 (Exhibit D-2), the Respondent advised the Appellant that her ADW services would be discontinued.
- 3) The notice provided the reason for the ADW discontinuation as “non-compliance with Member’s responsibilities [and] unsafe environment.” (Exhibit D-2)
- 4) Personal Attendants for the Appellant were exposed to verbal and physical altercations between the Appellant and her husband.
- 5) Personal Attendants for the Appellant were exposed to an unsanitary household environment due to rodent infestation and rodent feces.
- 6) Personal Attendants for the Appellant were exposed to abusive use of drugs by the Appellant’s husband in the Appellant’s home.

APPLICABLE POLICY

Chapter 501 of the BMS Provider Manual, at §501.34, details procedures for discontinuation of ADW services and defines an unsafe home environment as “...one in which the personal attendant and/or other agency staff are threatened or abused, and the staff’s welfare is in jeopardy.” This policy further details circumstances which meet this definition, including, “The person receiving ADW services or other household members repeatedly...display verbally and/or physically abusive behavior; and/or threaten a personal attendant or other agency staff...including menacing animals or verbal threats to harm the personal attendant and/or other

agency staff...display an abusive use of alcohol and/or drugs and/or illegal activities in the home.” The policy states that the circumstances that define an unsafe environment is not limited to the list of examples provided.

DISCUSSION

The Appellant has appealed the Respondent’s decision to discontinue ADW services based on an unsafe home environment. The Respondent must prove by a preponderance of the evidence that the home environment of the Appellant was unsafe for agency staff providing these services, that agency staff were threatened or abused, or that agency staff were in jeopardy.

The Respondent clearly showed that the Appellant’s home was an unsafe environment for agency staff. Testimony from agency staff and extensive recordings from in-home personal attendants – both for the Appellant and another individual living in the Appellant’s home (Exhibit D-4) – document a household in which agency staff were unsafe for multiple reasons.

The Appellant’s home was infested with rodents. The Appellant agreed that she “had mice,” but characterized it as few. This characterization from the Appellant, as well as her testimony denying the presence of rodent feces, were unconvincing. Testimony and evidence from the Respondent described rodent infestation to the extent that rodent feces could be found on cooking surfaces. It is unclear how agency staff can be expected to safely provide services that include light housekeeping and cooking in such an unsanitary environment.

The Appellant and her husband were involved in verbal and physical altercations in the presence of agency staff. Agency staff can not be expected to provide services under such conditions. The Appellant and her husband denied the altercations. However, during the hearing the Appellant and her husband both contradicted these initial denials. Furthermore, the threatening tone and demeanor of the Appellant’s husband throughout the hearing did nothing to support the notion that there were no such altercations in the home. The testimony and evidence from the Respondent in this area were clearly more convincing.

The Appellant was prescribed pain medication and the Appellant’s husband was not. Testimony and evidence from the Respondent detailed the drug abuse in the home in the form of the Appellant’s husband using pain medication intended for the Appellant. Denials from the Appellant and her husband in this area were unpersuasive. The responsibilities of agency staff providing ADW services may include appropriate medication administration, and agency staff can not be expected to provide services in an environment with drug abuse. For both reasons an unsafe environment is created when one household member is using medication prescribed for another.

The Respondent clearly showed basis for the discontinuation of the Appellant’s ADW services due to an unsafe household environment for the personal attendants and agency staff providing the services.

CONCLUSION OF LAW

Because the Appellant's household is an unsafe environment as defined by ADW policy, the Respondent was correct to discontinue the Appellant's participation in the ADW Program.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to discontinue the Appellant's participation in the ADW Program.

ENTERED this ____ Day of February 2019.

Todd Thornton
State Hearing Officer