



**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**

January 16, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2789

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,

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

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

██████████,

Appellant,

v.

Action Number: 18-BOR-2789

**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 November 20, 2018.

The matter before the Hearing Officer arises from the November 9, 2018 decision by the Respondent to discontinue the Appellant's Aged/Disabled Waiver Medicaid Program services.

At the hearing, the Respondent appeared by Tammy Grueser, RN, Bureau of Senior Services. Appearing as a witness for the Respondent was Barbara Paxton, Enrollment Coordinator, Bureau of Senior Services. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████, the Appellant's son. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged & Disabled Waiver Services Manual Policy Section 501.9
- D-2 Request for Discontinuation of Service dated November 8, 2018, and service termination notice dated November 9, 2018
- D-3 Documentation from Resource Consultant ██████████ for the period of August 3, 2018-November 8, 2018, Referral Form for Medicaid Aged and Disabled Waiver Program- Personal Options, Member Enrollment Request Form dated July 2, 2018, and Member Enrollment Confirmation Notice dated August 2, 2018
- D-4 Aged and Disabled Waiver-Personal Options Assessment dated August 8, 2018
- D-5 Aged and Disabled Waiver- Service Plan dated August 8, 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 enrolled in Aged/Disabled Waiver (ADW) Medicaid services on or about August 2, 2018 (D-3).
- 2) The Appellant requested that her son, [REDACTED], be approved as her personal attendant in August 2018 (D-3).
- 3) The Appellant's son was required to complete training and a criminal background check in order to serve as the Appellant's care provider through the program.
- 4) The Appellant's son failed to complete the requirements and the Appellant never received ADW services.
- 5) The Appellant's Resource Consultant contacted the Appellant on several occasions between August 3, 2018 and November 7, 2018, and addressed the training requirements (D-3).
- 6) On or about November 8, 2018, [REDACTED], submitted an Aged and Disabled Waiver Request for Discontinuation of Services due to non-compliance because the Appellant had made no effort to establish services in her home (D-2).
- 7) On November 9, 2018, the Respondent issued notice to the Appellant, informing her of its decision to discontinue services under the ADW Program because personal attendant services had not been provided for 180 days (D-2).

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.

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 Services can be discontinued when no personal attendant services have been provided for 180 continuous days.

The Appellant testified that her son does everything for her, and she feared that the Department would take her house as part of the estate recovery process if she started ADW services. She stated that her son, who receives disability benefits, thought he had longer to meet training requirements. She asked that he be given another chance to complete the requirements.

While the Appellant had made no attempt to begin ADW services in her household by November 8, 2018, she was notified that her services were being terminated because she had received no services for 180 days. As she was enrolled in ADW services on August 2, 2018, 180 days had not elapsed; therefore, the reason for closure – as cited in the notice - was incorrect.

The Respondent's decision to terminate ADW benefits based on the 180-day lack of service requirement cannot be affirmed.

CONCLUSION OF LAW

The Respondent's decision to terminate the Appellant's Aged/Disabled Waiver Medicaid Program benefits cannot be affirmed.

DECISION

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

ENTERED this 16th Day of January 2019.

**Pamela L. Hinzman
State Hearing Officer**