



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary**

**Christopher G. Nelson
Interim Inspector General**

January 10, 2024

[REDACTED]

RE: [REDACTED] v. WVDohS
ACTION NO.: 23-BOR-3475

[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 Human Services. 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Tamra Grueser, BMS

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**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

██████████,

Appellant,

v.

Action Number: 23-BOR-3475

**WEST VIRGINIA DEPARTMENT OF
HEALTH BUREAU OF MEDICAL SERVICES,**

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on January 10, 2024, on an appeal filed November 13, 2023.

The matter before the Hearing Officer arises from the October 26, 2023 decision by the Respondent to discontinue Aged and Disabled Waiver services.

At the hearing, the Respondent appeared by Tamra Grueser, RN, Bureau of Senior Services . 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 501.38
- D-2 Aged and Disabled Waiver Request for Discontinuation of Service
- D-3 Notice of Decision dated October 26, 2023
- D-4 Incident Report dated June 9, 2023
- D-5 Incident Report dated June 23, 2023
- D-6 Snapshot of Member Detail

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 was receiving services under the Aged and Disabled Waiver program.
- 2) On September 27, 2023, the Appellant signed and acknowledged the Participant's [sic] Rights and Responsibilities with her case management agency, [REDACTED] (Exhibit D-2) in which she agreed to maintain a safe home environment for all service providers.
- 3) On October 26, 2023, the Respondent received a Request for Discontinuation of Service (Exhibit D-2) from the Appellant's case management agency, [REDACTED], citing an unsafe environment at the Appellant's home.
- 4) [REDACTED] alleged in the Request for Discontinuation of Services that the Appellant was in violation of her responsibility to maintain a safe home due to the Personal Attendant observing drug paraphernalia on a table at the Appellant's residence. (Exhibit D-2)
- 5) [REDACTED] alleged in the Request for Discontinuation of Services that the Appellant was currently on a behavior contract with her Personal Attendant agency. (Exhibit D-2)
- 6) On June 9, 2023, the Appellant had an incident with another case management agency, [REDACTED] regarding verbal abuse of a Personal Attendant. (Exhibit D-4)
- 7) On June 29, 2023, the Appellant had an incident with [REDACTED] regarding verbal abuse of a Personal Attendant. (Exhibit D-5)
- 8) On October 20, 2023, the Appellant had an incident with [REDACTED] which summarized past verbal abuse incidents with the Appellant and the Personal Attendant's observation of drug paraphernalia in the Appellant's home.
- 9) On October 26, 2023, the Respondent issued notice to the Appellant informing her that her services received under the Medicaid Aged and Disabled Waiver program are discontinued due to Non-Compliance with Members responsibilities/Unsafe Environment.

APPLICABLE POLICY

Bureau for Medical Services Provider Manual §501.38 explains a discontinuation of services under the Aged and Disabled Waiver Program:

The following require a Request for Discontinuation of Services form:

- No personal attendant services have been provided for 180 continuous days – for example, an extended placement in LTC 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 member or other household members 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 member or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
 - The ADW provider agency has been forewarned by a mental health professional/law enforcement of harm or ideations of harm by the member.
 - The physical environment of the member's home is either hazardous or unsafe.
- The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures. This can be found on the ADW website.
- The member is non-compliant with the Service Plan, the responsibility agreement (if applicable), the program requirements by policy, and the Member Rights and Responsibility Guide.
- The member no longer desires services.
- The member no longer requires services.
- The members can no longer be safely maintained in the community with ADW program services.
- The applicant/member has received a slot but does not accept the required case management services and/or will not allow a service plan to be developed.

The Request for Discontinuation of Services form must be uploaded into the Utilization Management Contractor's (UMC's) web portal by the case manager and a notification is sent to the Operating Agency (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 member (or legal representative) no longer desires services. The effective

date for the discontinuation of services is 13 calendar days after the date of the OA notification letter if the member (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 BMS, and all applicable entities are notified, i.e., police, APS. When the OA receives an unsafe closure request, they will review and make a recommendation to the Bureau for Medical Services (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 90 days to allow the member 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 member during any time that services are suspended. In all cases, the member must be provided their right to a Fair Hearing by the OA. However, due to the nature of unsafe environment closure, the member is not eligible for the option to continue existing services during the fair hearing process.

DISCUSSION

Pursuant to policy, Aged and Disabled Waiver services may be discontinued if the member's home is determined to be an unsafe environment in which the personal attendant or other agency staff are threatened or abused, and the staff's welfare is in jeopardy, or the physical environment of the member's home is either hazardous or unsafe. Discontinuation of services may occur due to the member's non-compliance with a service plan or member responsibility agreement.

On October 26, 2023, the Respondent discontinued the Appellant's Aged and Disabled Waiver services due to non-compliance with the member responsibility agreement and an unsafe environment. The Respondent must prove by a preponderance of the evidence that the Appellant failed to comply with the member responsibility and maintain a safe environment for a Personal Attendant.

The Appellant has worked with multiple agencies through the Aged and Disabled Waiver services program. The Respondent based its decision to discontinue ADW services based on the Appellant's case management agencies recommendation that the Appellant failed to maintain a safe home environment for all service providers because a Personal Attendant "walked in and found a meth pipe laying on a table in the living room." (Exhibit D-2) The Respondent provided separate Incident Reports from another case management agency which documents the Appellant's verbal abuse and threatening behavior toward agency staff. (Exhibit D-4 and Exhibit D-5)

The Appellant testified that she has experienced multiple problems with Personal Attendants from both case management agencies. The Appellant acknowledged that she had a verbal altercation with one Personal Attendant when an article of clothing, belonging to the Appellant, was not returned after it was loaned to the Personal Attendant. The Appellant denied any illegal drug use indicating that the drug paraphernalia in her home was for cannabidiol oil which she utilized for pain management.

The Respondent failed to provide sufficient evidence to support the allegations that the Appellant's home was an unsafe environment or that there was a violation of the member responsibility agreement. There were no statements or testimony from Personal Attendants familiar with the previous incidents to support the claim that the Appellant's home was unsafe. In regard to drug use, policy requires that the member or other members display an abusive use of alcohol and/or drugs or illegal activities in the home. Evidence failed to support a pattern or display of abusive illegal activities in the home.

Whereas the preponderance of the evidence did not demonstrate that the Appellant was non-compliant or that the physical environment of her home was hazardous or unsafe, the Respondent's decision to discontinue the Appellant's services under the Aged and Disabled Waiver Program cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Aged and Disabled Waiver services may be discontinued if the member's home is determined to be an unsafe environment for Personal Attendants and/or other agency staff.
- 2) The evidence failed to demonstrate that the Appellant was non-complaint with her member responsibility agreement or that the Appellant displayed an abusive use or alcohol, drugs, or illegal activities in the home.
- 3) The Respondent incorrectly discontinued the Appellant's benefits and services through the Aged and Disabled Waiver program.

DECISION

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

ENTERED this ____ day of January 2024.

Eric L. Phillips
State Hearing Officer