



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 14, 2016



RE: [REDACTED] v. WV DHHR  
ACTION NO.: 15-BOR-3608

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: Bureau for Senior Services

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

██████████,

**Appellant,**

**v.**

**Action Number: 15-BOR-3608**

**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 6, 2016, on an appeal filed November 15, 2015.

The matter before the Hearing Officer arises from the October 28, 2015, decision by the Respondent to discontinue the Appellant's services under the Personal Care program.

At the hearing, the Respondent appeared by Tamra Grueser, RN with the Bureau for Senior Services. Appearing as a witness for the Respondent was ██████████, RN with ██████████. The Appellant appeared by her daughter, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

D-1 West Virginia Medicaid Provider Manual §517.25

D-2 Personal Care Request for Discontinuation of Services dated July 7, 2015, and Closure Letter dated October 28, 2015

D-3 Nurses Notes from ██████████, RN dated July 7, 2015

D-4 Nurses Notes dated October 28, 2015, and Personal Care Incident Management Report dated October 28, 2015

D-5 Statement from ██████████, Homemaker with ██████████

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 services under the Personal Care program.
- 2) On July 7, 2015, the Appellant's case management agency requested (D-2) a discontinuation of her services due to an unsafe home environment.
- 3) The Department received a statement (D-5) from the Appellant's homemaker, alleging that she had witnessed the Appellant's son participating in the act of buying and selling illegal drugs out of the Appellant's home.
- 4) On October 28, 2015, the Appellant was notified (D-2) that her services were being discontinued due to the allegations of an unsafe environment.
- 5) The Appellant's daughter argued that her mother's homemaker had stolen money from her mother, and then fabricated the story of alleged drug deals as a cover for her own misdeeds.

### **APPLICABLE POLICY**

West Virginia Medicaid Provider Manual §517.25 states that a Request for Discontinuation of Services Form is submitted when an unsafe environment is present in which the direct care staff or other agency staff are threatened or abused and the staff's welfare is in jeopardy. This may include the member or other household member display an abusive use of alcohol or drugs or engages in the manufacture, buying and or selling of illegal substances.

If it is an appropriate request, the Bureau for Senior Services approves the discontinuation and sends notification of the discontinuation of services to the member. Services may be discontinued immediately if there is an unsafe environment.

### **DISCUSSION**

On June 26, 2015, the Appellant's homemaker documented that she heard the Appellant's son talking with someone on the phone about "trading pills". The homemaker documented that shortly after the phone call, the son met someone outside of the Appellant's home, where the alleged drug deal was made.

On July 3, 2015, the Appellant's homemaker was asked to drive the Appellant to meet her boyfriend. When they arrived at his residence, the Appellant's son was also there, who according to the homemaker asked the Appellant's boyfriend for some "sleeping pills".

The statement from the Appellant's former homemaker supports the Department's position that the Appellant's home was an unsafe home environment and threatened the safety of any direct care staff placed in her home.

The purported theft of the Appellant's money was not reported to the case management agency until after the Appellant's services were discontinued due to an unsafe home environment and therefore hold little weight in this decision.

### **CONCLUSION OF LAW**

The Department received reliable information to the effect that the Appellant had provided an unsafe work environment for her home health care provider. The Department was correct in its decision to discontinue the Appellant's Personal Care Services, according to policy.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to discontinue the Appellant's services under the Personal Care program.

**ENTERED this 14<sup>th</sup> day of January 2016**

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**Kristi Logan**  
**State Hearing Officer**