



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
4190 Washington Street, West
Charleston, West Virginia 25313
(304) 746-2360**

**Jim Justice
Governor**

**Bill J. Crouch
Cabinet Secretary**

August 15, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2010

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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Tamra Grueser, RN, Bureau of Senior Services

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2010

**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 August 8, 2017, on an appeal filed June 20, 2017.

The matter before the Hearing Officer arises from the June 5, 2017 decision by the Respondent to terminate Appellant's benefits and services under the Personal Care Services Program due to non-compliance.

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

Department's Exhibits:

- D-1 Personal Care Services Policy Manual §§517.16 and 517.19
- D-2 Personal Care Request for Discontinuation of Service form with supporting documentation, dated June 1, 2017
- D-3 Personal Care Pre-Admission Screening Form (PAS), dated March 7, 2017
- D-4 Plan of Care, dated April 2017

Appellant's Exhibits:

- A-1 Letter from Appellant's physician

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 is a recipient of benefits and services under the Personal Care Services (PCS) program.
- 2) As part of the Appellant's Plan of Care (POC), PCS staff was to assist the Appellant with bathing, dressing, grooming, meal preparation., and cleaning. (D-4)
- 3) Because the Appellant refused to allow the staff to assist with the tasks listed on the POC, a Request for Discontinuation of Service was completed on June 1, 2017. (D-2)
- 4) On June 5, 2017, the Appellant was notified that the services she received under the PCS program were discontinued because she was persistently non-compliant.

APPLICABLE POLICY

Personal Care Services Policy Manual (PCS policy) section 517.19 allows discontinuation of services when:

- A. Unsafe Environment – an unsafe environment is one in which the Direct Care Worker 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:
 1. The member or other household members repeatedly demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a Direct Care Worker or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals
 2. The member or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
 3. The physical environment is either hazardous or unsafe.
- B. The member is persistently non-compliant with the PC Nursing Plan of Care (POC) creating a risk to their health and safety.
- C. The member no longer desires services.
- D. The member is no longer medically eligible for PC services.

DISCUSSION

On June 5, 2017, the Appellant was notified that the services she received under the Medicaid Personal Care Services (PCS) program were discontinued, because Appellant was persistently non-compliant. The Appellant requested a fair hearing to contest the Department's decision.

PCS policy allows discontinuation of services when the person is persistently non-compliant with the PC Nursing Plan of Care. In this situation, a Request for Discontinuation of Services form must be completed.

The Department's representative, Tamra Grueser, testified that the Appellant was non-compliant with her PCS Plan of Care. As part of the Appellant's Plan of Care (POC), PCS staff was to assist the Appellant with bathing, dressing, grooming, meal preparation, and cleaning. Ms. Grueser stated the Appellant would not allow the staff to assist with the tasks listed on her POC. She stated when staff arrived at the Appellant's home, the Appellant has already eaten, bathed, and dressed herself. There were also several occasions when the Appellant changed her bedding and started laundry without assistance from PCS staff. Ms. Grueser stated that PCS staff noted on several occasions that because the Appellant completed all or most tasks, there was nothing they could do when they arrived at the Appellant's home.

The Appellant testified that she had to do some of the tasks listed on her POC on her own. She stated that she wakes up before staff arrives to her home and must eat or she will become ill. She stated that although it takes an extended amount of time, she is capable of bathing and dressing herself. When asked what tasks she would allow the PCS staff to complete, the Appellant stated she would allow them to do household chores. The Appellant's daughter testified that the Appellant has a high risk of falling and has several health problems. She added that the Appellant's catheter has come out many times at night, and that is why the Appellant changes and washes her bedding.

Because the Appellant lives alone and has a high risk of falling, both the Department and the Appellant's daughter agreed that she would benefit from the PCS program. However, the Appellant refused to allow the PCS staff to assist her. The Appellant's own testimony showed she still was hesitant to allow staff to assist with many of the tasks listed on her POC. The Department was correct in its decision to discontinue the services the Appellant received under the PCS program.

CONCLUSION OF LAW

Because the Appellant was persistently non-compliant with her PC Plan of Care, the Department correctly discontinued her PCS pursuant to PCS policy section 517.19.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to discontinue the Appellant's benefits and services received under the PCS program due to non-compliance.

ENTERED this 15th Day of August 2017.

**Natasha Jemerison
State Hearing Officer**