



July 9, 2025

[REDACTED]

RE: [REDACTED] v. WVDoHS
ACTION NO.: 25-BOR-2040

Dear [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 ensure 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: Recourse to Hearing Decision
Form IG-BR-29

cc: Connie Sankoff, Department Representative

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

[REDACTED],

Appellant,

v.

Action Number: 25-BOR-2040

**WEST VIRGINIA DEPARTMENT OF
HUMAN SERVICES BUREAU FOR
MEDICAL SERVICES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on June 26, 2025, upon a timely appeal filed on May 14, 2025.

The matter before the Hearing Officer arises from the April 21, 2025 decision by the Respondent to discontinue Aged and Disabled Waiver (ADW) services.

At the hearing, the Respondent appeared by Connie Sankoff. Appearing as witnesses for the Respondent were Connie Sankoff, Jenni Sutherland, Mary Casto, and Cynthia Mauk. The Appellant was self-represented and testified on his behalf. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing request form
- D-2 Scheduling order
- D-3 Notice of decision, dated April 21, 2025
- D-4 Aged and Disabled Waiver Request for Discontinuation of Service
Date requested: March 11, 2025
Cover letter for supporting documentation, dated March 11, 2025

D-5	Undated policy excerpt from BMS Provider Manual, Chapter 501
D-6	Supporting documentation for ADW service discontinuation Nurses' notes ADW Personal Attendant Services Agreement, signed April 25, 2023 Incident tracking reports Case Management Monthly/Quarterly Contact forms Aged and Disabled Waiver logs

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 a recipient of Aged and Disabled Waiver (ADW) services .
- 2) The Respondent contracts with a provider and a case management agency to provide ADW services to the Appellant.
- 3) The Respondent received a request from its contract agencies (Exhibit D-4), dated March 11, 2025, to discontinue ADW services to the Appellant.
- 4) This request (Exhibit D-4) was accompanied by supporting documentation (Exhibit D-6), including nursing notes, incident tracking, and other forms and logs maintained by the Respondent's contract agencies.
- 5) The basis of the discontinuation request (Exhibit D-4) was an unsafe environment.
- 6) The Respondent issued a notice (Exhibit D-3), dated April 21, 2025, advising "The services you have received under the Medicaid Aged and Disabled Waiver program are discontinued due to Non-Compliance with Members responsibilities."
- 7) The discontinuation documentation (Exhibit D-6) referenced an April 2023 incident in which an ADW caregiver observed drug use by the Appellant, which was reported to be methamphetamine.
- 8) Subsequent to this incident, the Appellant signed an agreement (Exhibit D-6) on April 25, 2023, which stated, in part, "I understand that I am not to use any illegal or illicit drugs or medication while the DCW is in the home."

- 9) The discontinuation documentation (Exhibit D-6) included nurses' notes from a January 2024 incident in which the ADW nurse witnessed the Appellant "actively hallucinating" and the ADW nurse made a referral to Adult Protective Services (APS) based on the Appellant's behavior.
- 10) The discontinuation documentation (Exhibit D-6) included nurses' notes from a July 2024 contact in which the Appellant reported a desire to kill one of the auditory hallucinations he referred to as [REDACTED] during a hallucination.
- 11) The discontinuation documentation (Exhibit D-6) included nurses' notes from a September 2024 report of public urination by the Appellant outside the home.
- 12) The discontinuation documentation (Exhibit D-6) included nurses' notes and incident tracking forms from an October 2024 APS referral made when an ADW nurse discovered the Appellant was not taking his prescribed medications.
- 13) The discontinuation documentation (Exhibit D-6) included nurses' notes from a March 2025 incident in which the Appellant was verbally abusive to ADW staff.
- 14) The Appellant displayed illegal drug use.
- 15) The Appellant displayed illegal behavior outside the home.
- 16) The Appellant was verbally abusive to ADW staff.
- 17) The Appellant's threat to "kill" one of his auditory hallucinations – during a hallucination – is an indirect threat to ADW staff.
- 18) The Appellant's threat to "kill" one of his auditory hallucinations – during a hallucination – creates an unsafe physical environment for ADW staff.

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual §501.38, Discontinuation of Services, states:

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:

- o 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.
- o The member or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
- o The ADW provider agency has been forewarned by a mental health professional/law enforcement of harm or ideations of harm by the member.
- o 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 UMC's web portal by the case manager 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 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 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

The Appellant requested a hearing to appeal the decision of the Respondent to discontinue his Aged and Disabled Waiver (ADW) services due to an unsafe environment. The Respondent must show, by preponderance of the evidence, that it correctly discontinued the Appellant's ADW services on this basis.

The Respondent contracts with agencies to provide ADW services to individuals. These agencies provided documentation (Exhibit D-6) to support a request (Exhibit D-5) for discontinuation of the Appellant's ADW services based on their report of an unsafe environment.

Throughout the documentation (Exhibit D-6) there were reports of communication from the Appellant characterized as "disturbing," but were ambiguous regarding details. The Appellant was verbally abusive to ADW staff. During one of his auditory hallucinations, the Appellant identified an individual named [REDACTED] and indicated a desire to "kill" or "strangle" this individual. (Exhibit D-6) These statements support the claim of an unsafe environment.

The Appellant displayed illegal drug use and signed a form agreeing to refrain from illegal drug use in the presence of ADW staff. Cynthia Mauk, the Appellant's case manager with CCIL, witnessed drug paraphernalia in the Appellant's home. Jenni Sutherland, the executive director with [REDACTED], testified that her agency had difficulty providing staff to attend to the Appellant due to caregivers reporting unwillingness or "discomfort" with providing care to the Appellant. Mary Casto, an RN with [REDACTED], witnessed repeated medication compliance issues by the Appellant which contributed to the Appellant's behavioral issues. Documentation revealed public urination by the Appellant at a medical provider's office. This behavior was outside the home and may have been controllable by the Appellant or related to medication non-compliance.

Behaviors witnessed by ADW staff resulted in multiple APS referrals. The Appellant exhibited illegal drug use resulting in a service agreement (Exhibit D-6). There were multiple reports of "disturbing" phone calls or other communication from the Appellant. There were multiple reports of medication non-compliance, for prescriptions intended to regulate the Appellant's behavior.

The Appellant made a verbal threat to ADW staff on March 4, 2025. The Appellant's remarks about wanting to kill or strangle an individual he identified as [REDACTED] are implied threats to ADW staff. The Appellant's behavior met several of the circumstances set by policy as conditions for ADW discontinuation based on an unsafe environment, including verbally abusive behavior, verbal threats, drug use in the home, and an unsafe environment caused by the Appellant's non-compliance with medications intended to stabilize his behavior. Policy recommendations for discontinuation requests include temporary suspension and immediate closure, but the Appellant's previous ADW service agreement stemming from his drug use in the home and the multi-year span of documented behavior does not warrant "time to remedy the situation," and staff safety clearly supports immediate closure. The Respondent clearly showed it met the requirements for discontinuing the Appellant's ADW services based on an unsafe environment.

CONCLUSIONS OF LAW

- 1) Because the Appellant exhibited illegal drug use, his home is an unsafe environment for the provision of ADW services.
- 2) Because the Appellant was verbally abusive to ADW staff, his home is an unsafe environment for the provision of ADW services.
- 3) Because documented, persistent behavior by the Appellant over multiple years created an unsafe environment for the provision of ADW services, a temporary closure of ADW services is not supported.
- 4) Because the Appellant's home is an unsafe environment for the provision of ADW services, the Respondent must discontinue ADW services to the Appellant.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to discontinue the Appellant's ADW services due to an unsafe environment.

ENTERED this _____ day of July 2025.

Todd Thornton
State Hearing Officer