



June 14, 2024

[REDACTED]

RE: [REDACTED] v. WV DOHS
ACTION NO.: 24-BOR-2130

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 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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Connie Sankoff, WVDOHS/BMS/BoSS

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

██████████,

Appellant,

v.

Action Number: 24-BOR-2130

**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 ██████████ ██████████. 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 11, 2024.

The matter before the Hearing Officer arises from the February 8, 2024 decision by the Respondent to terminate Aged/Disabled Waiver (ADW) program services.

At the hearing, the Respondent appeared by Connie Sankoff, RN, Bureau of Senior Services. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was his mother, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Bureau for Medical Services (BMS) Provider Manual Chapter 501 (excerpt)
- D-2 Bureau for Medical Services (BMS) Provider Manual Chapter 501.34 (excerpt)
- D-3 Aged and Disabled Waiver Pre-Admission Screen (PAS), dated November 27, 2023
- D-4 PAS Summary, dated November 27, 2023
- D-5 Aged and Disabled Waiver Request for Discontinuation of Service, dated January 2, 2024
- D-6 Aged and Disabled Waiver – RN Contact Form, unsigned, dated December 20, 2023
- D-7 Notice of discontinuation of Aged and Disabled Waiver Medicaid, dated February 8, 2024
- D-8 Aged and Disabled Waiver – Service Plan, signed and dated November 6, 2023
- D-9 Aged and Disabled Waiver Program Medical Necessity Evaluation Request, dated September 8, 2022

D-10 Hering Request, signed and dated March 25, 2024

D-11 Aged and Disabled Waiver – RN Contact Form, signed and dated August 3, 2023; Aged and Disabled Waiver – RN Contact Form, signed and dated November 6, 2023; Aged and Disabled Waiver – RN Contact Form, unsigned, dated November 2, 2023; Aged and Disabled Waiver – RN Contact Form, unsigned, dated December 20, 2023

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 is a recipient of Aged and Disabled Waiver (ADW) program services.
- 2) On or about November 30, 2023, the Appellant and his roommate were involved in an altercation which prompted the arrest of the Appellant with ensuing charges of domestic assault, gun possession, possession of a controlled substance with intent to distribute, and other charges.
- 3) On January 2, 2024, the Respondent received a Request for Discontinuation of Service from the Appellant’s case management agency due to an unsafe environment. (Exhibit D-5)
- 4) The January 2, 2024, Request for Discontinuation of Service, included a signed statement from [REDACTED] RN, CM, (hereinafter referred to as “statement”) citing the November 30, 2023 altercation and subsequent arrest of the Appellant resulting in charges. (Exhibit D-5)
- 5) The statement alleged that the November 30, 2023 incident was not the first incident involving a firearm in the Appellant’s home, and that “multiple caregivers” had “left for various reasons including firearms and drugs in the home.” (Exhibit D-5)
- 6) On February 8, 2024, the Respondent sent the Appellant a notice of discontinuation of his ADW program services due to non-compliance with Members responsibilities/unsafe environment. (Exhibit D-7) m

APPLICABLE POLICY

Bureau for Medical Services (BMS) Policy Manual, Section 501, Aged and Disabled Waiver (ADW), §501.38 Discontinuation of Services:

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 member 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. I

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.

The following do not require a Request for Discontinuation of Services form but must be reported to the OA and a discharge request in the UMC's web-based portal:

- Death
- Moved Out of State
- Medically Ineligible
- Financially Ineligible

DISCUSSION

Policy allows Aged and Disabled Waiver (ADW) program services to 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.

On January 2, 2024, the Respondent received a Request for Discontinuation of Service from the Appellant's case management agency due to an unsafe environment. The January 2, 2024, Request for Discontinuation of Service, included a signed statement from [REDACTED] RN, CM, (hereinafter referred to as "statement") citing a November 30, 2023 altercation with his roommate and subsequent arrest of the Appellant resulting in charges. The statement also included allegations that there have been "multiple caregivers" who left for various reasons including firearms and drugs in the home. On February 2, 2024, the Respondent sent notification to the Appellant that his ADW program services were being discontinued due to "Non-Compliance with Members Responsibilities/Unsafe Environment".

The Appellant did not deny that an altercation with his roommate had occurred on or about November 30, 2023, which prompted his arrest with ensuing charges of domestic assault, gun possession, possession of a controlled substance with intent to distribute, and other charges. However, the Appellant testified that he has not been indicted on those charges to date and denies the allegations made by the roommate. The Appellant testified that his roommate was the

aggressor and that she was a drug addict and that the drugs the police found in his home was hers. The Appellant also did not deny he had a firearm in his bedroom but denied having pointed the gun at the roommate as she alleged.

The Respondent's representative presented as evidence of an unsafe environment, four separate Aged and Disabled Waiver – RN Contact Forms, two of which were unsigned. Two of the four signed statements included an August 3, 2023 statement. The August 3, 2024 statement alleged that the Appellant had been “insulting and cursing” to the caregiver via text messages. The Appellant denied this. No text messages were submitted for this hearing. The other signed statement dated November 6, 2023, involved a six month assessment and discussed the possibility of transferring the Appellant as it was alleged that he had four different personal assistants since July. The two unsigned statements were not given any weight as no witnesses were presented who could corroborate the allegations contained within those documents.

Although the Appellant admitted he did have a gun in his bedroom and one locked in his safe, there was no evidence presented to show that he violated the terms of the member responsibility policy in having an unsafe environment. Specifically, no evidence was presented to show that the Personal Attendant and/or other agency staff was threatened or abused, and the staff's welfare was in jeopardy. There was no evidence presented to show that the Appellant displayed verbally and/or physically abusive behavior, or threatened a Personal Attendant or other agency staff with a gun knife, or other potentially dangerous weapon.

The Respondent failed to show by the preponderance of the evidence that the Appellant was non-compliant with member responsibility policy and that his home was an unsafe environment. The Respondent's decision to discontinue the Appellant's services under the ADW program cannot be affirmed.


CONCLUSIONS OF LAW

- 1) Policy allows for ADW program services to be discontinued if the member's home is determined to be an unsafe environment.
- 2) The evidence failed to demonstrate by a preponderance of evidence that the Appellant was non-compliant with member responsibility policy or that the Appellant's home was an unsafe environment as defined by policy.
- 3) The Respondent incorrectly discontinued the Appellant's ADW program services.

DECISION

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

ENTERED this 14th day of June 2024.



Lori Woodward, Certified State Hearing Officer

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
HEARING REQUEST NOTIFICATION

TO BE COMPLETED BY DEPARTMENT REPRESENTATIVE

Department Representative:	Connie Sankoff, RN	Appellant Name:	Justin Medler
County/Home Office:	Kanawha	Residing County:	Berkeley
Address:	1900 Kanawha Blvd, East	Address:	491 Trimble Avenue
	Charleston, WV 25305		Martinsburg, WV 25404
Phone/Email:	304-558-3317 connie.p.sankoff@wv.gov	Phone/Email:	304-279-7324
Date Department received request:	05-06-2024	Case Number:	N/A
Programs(s) being appealed:	AGED & DISABLED WAIVER SERVICES		
Type of Request:	<input checked="" type="radio"/> Written <input type="radio"/> Verbal		
Notification Letter Date:	02-08-2024	If not attached, explain:	
Are benefits or services continued pending hearing decision:	<input type="radio"/> Yes <input checked="" type="radio"/> No <input type="radio"/> N/A		
Reason for Hearing Request and Principal Issue: (Example: SNAP denial due to excess income, Maltreatment finding by IIU)			
Explain Briefly:	Mr. Medler is requesting a fair hearing for the following reasons: In Home Care, Medicaid Aged and Disabled Waiver Program. ADW Services were discontinued for the following reason: Non-Compliance with Member Responsibilities/Unsafe Environment.		
Applicable Manual Section(s):	AGED & DISABLED WAIVER MANUAL - SECTION 501.9.1		
Appellant Representative:	<input checked="" type="radio"/> Self <input type="radio"/> Relative <input type="radio"/> Paralegal <input type="radio"/> Attorney <input type="radio"/> CMA <input type="radio"/> Other		
Representative Name:	self		
Representative Phone and Email:	N/A		
Address:	N/A		

TO BE COMPLETED BY HEARING OFFICIAL

BOR Action #	24-BOR-2130	BOR Official:	Woodward
Decision:	<input type="radio"/> Upheld <input checked="" type="radio"/> Reversed <input type="radio"/> Dismissed <input type="radio"/> Abandoned <input type="radio"/> Remanded <input type="radio"/> Withdrawn <input type="radio"/> Invalid		
Date Hearing Record Complete and Mailed:	6/14/24		

IG-BR-29 (Revised and Effective Date: 01/01/2016)

PREVIOUS VERSIONS WILL NOT BE ACCEPTED – DO NOT ALTER THIS FORM

Forward form along with Hearing Request and Notification Letter to: DHHROIGBORE@WV.GOV.

RECOURSE TO ADMINISTRATIVE HEARING DECISION

A. INTERMEDIATE COURT OF APPEALS

Pursuant to West Virginia Code §16B-2-2(c), proceedings for judicial review of any final judgments, orders, or decisions of the Board of Review must be instituted by filing an appeal to the Intermediate Court of Appeals **within 30 days** after the date upon which such party received notice of the final order or decision of the agency. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to affect any such appeal.

The costs of preparing the official record shall be assessed as part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be assessed by the court for the additional costs involved.

Upon demand by any party to the appeal, the agency shall furnish, at cost to the requesting party, a copy of the official record.

B. THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the United States Department of Health and Human Services, Washington, D.C. 20201.

C. THE UNITED STATES DEPARTMENT OF AGRICULTURE

If you believe you have been discriminated against because of race, color, national origin, age, sex or handicap, write immediately to the Secretary of the Department of Agriculture, Washington, D.C. 20250.