



July 3, 2024

[REDACTED]

RE: [REDACTED] v. WVDoHS-BMS
BOR Action No.: 24-BOR-2386

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,

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

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

cc: Connie Sankoff, BoSS

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-2386

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

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 27, 2024, on appeal filed June 4, 2024.

The matter before the Hearing Officer arises from the April 30, 2024 decision by the Respondent to discontinue the Appellant's Aged and Disabled Waiver services. (ADW)

At the hearing, the Respondent appeared by Connie Sankoff, RN, Bureau of Senior Services. Appearing as witnesses for the Respondent were Ashley Matey, RN, ██████████, Seth Kelly, RN, ██████████, Cathy Stephens, ██████████, Director-██████████, Shely Conley, ADW Case Manager-██████████ and Tyler Yates, RN, ADW Case Manager-██████████. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Aged and Disabled Waiver Manual Chapter 501.34-501.39
- D-2 Pre-Admission Screening dated October 10, 2023
- D-3 Hearing Request dated June 4, 2024
- D-4 Aged and Disabled Waiver Request for Discontinuation of Services dated April 24, 2024
- D-5 Notice of Decision dated April 30, 2024

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 applied for Aged and Disabled Waiver (ADW) services.
- 2) A Pre-Admission Screening was completed on October 10, 2023 which identified seven functional deficits and seventeen total service level points. (Exhibit D-2)
- 3) The Appellant was medically eligible for ADW services.
- 4) The Appellant's ADW services were activated on October 26, 2023.
- 5) The Appellant received no Personal Attendant services since October 26, 2023.
- 6) The Personal Attendant agency made multiple attempts to complete services with the Appellant in February 2024, March 2024 and April 2024.
- 7) On April 24, 2024, the Personal Attendant agency completed a Request for Discontinuation of Services (Exhibit D-4) citing that no services had been provided for 180 continuous days.
- 8) On April 30, 2024, the Respondent issued a Notice of Decision to the Appellant informing her that her ADW services were being discontinued, effective the same date, because no Personal Attendant services have been provided for 180 consecutive days.
- 9) On June 4, 2024, the Appellant requested a fair hearing on the matter citing that she never received a Personal Attendant worker. (Exhibit D-3)

APPLICABLE POLICY

Bureau for Medical Services 501.38 documents:

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

DISCUSSION

Governing policy stipulates that ADW services may be discontinued when there has been no personal attendant for 180 continuous days. On April 30, 2024, the Respondent's Bureau of Senior Services discontinued the Appellant's ADW services based on no Personal Attendant services being provided to the Appellant since October 26, 2023. The Appellant appeals the Respondent's decision and requests a hearing on the discontinuation, contending that no Personal Attendant worker had been provided by the Personal Attendant agency. The Respondent must prove by a preponderance of the evidence that the Appellant had not received Personal Attendant services for 180 continuous days.

The Respondent's evidence revealed that the Appellant was approved for ADW services on October 26, 2023, but received no Personal Attendant services since the approved date. Evidence reveals that the Personal Attendant agency attempted to provide assessments and Personal Attendant services on multiple occasions between February 2024 and April 2024, making telephonic contact on several occasions, but was unsuccessful in completing at-home visits to provide services. On April 24, 2024, the Personal Attendant agency moved to discontinue the Appellant's ADW services due to no services being provided for 180 continuous days with the last date of service being October 26, 2023.

The Appellant contends that she never received a Personal Attendant and refuted the Respondent's testimony that agency attempted to make contact at her home.

ADW services may be discontinued in the event that Personal Attendant services have not been provided for 180 continuous days. Evidence is clear that the Respondent's Personal Attendant agency attempted to make multiple contacts with the Appellant to provide such services since October 26, 2023, but was unsuccessful. Because the Appellant has not received Personal Attendant services for 180 continuous days, the Respondent's decision to discontinue ADW services is affirmed.

CONCLUSIONS OF LAW

- 1) Policy requires that ADW services may be discontinued when no Personal Attendant services have been provided for 180 continuous days.
- 2) The Appellant was approved for ADW services on October 26, 2023 but received no Personal Attendant services.
- 3) The Personal Attendant agency made several attempts to provide services but was unsuccessful.

- 4) The Appellant received no Personal Attendant services for 180 continuous days; therefore, the Respondent was correct in its decision to discontinue ADW services.

DECISION

It is the decision of the State Hearing Officer to uphold the Respondent's decision to discontinue the Appellant's ADW services.

ENTERED this _____ day of July 2024.

Eric L. Phillips
State Hearing Officer