



November 21, 2024

[REDACTED]

RE: [REDACTED] v. WVDOHS
ACTION NO.: 24-BOR-3357

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,

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**

████████████████████,

Appellant,

v.

Action Number: 24-BOR-3357

**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 November 7, 2024, upon a timely appeal filed on October 2, 2024.

The matter before the Hearing Officer arises from the September 20, 2024 decision by the Respondent to discontinue Aged/Disabled Waiver (ADW) Services.

At the hearing, the Respondent appeared by Connie Sankoff. Appearing as witnesses for the Respondent were ██████████. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 BMS Provider Manual, Chapter 501 (excerpts)
- D-2 Pre-Admission Screening (PAS) form, dated June 6, 2024
- D-3 PAS Summary form, dated June 6, 2024
- D-4 Aged and Disabled Waiver
Request for Discontinuance of Service
Date: September 5, 2024

Aged and Disabled Waiver Notes
Entries dated July 9, 2024, through August 7, 2024

- D-5 Notice of decision, dated September 20, 2024
- D-6 Hearing request form
- D-7 Scheduling order

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/Disabled Waiver (ADW) Services.
- 2) The Appellant's most recent medical assessment for ADW Services was conducted on June 6, 2024. (Exhibit D-2)
- 3) During the Appellant's June 2024 (Exhibit D-2) assessment she was awarded a total of 25 service level points (Exhibit D-3) and approved for ADW Services at a level 'C'.
- 4) The Appellant is noted to be "non-ambulatory," and "bed bound." (Exhibit D-2)
- 5) The Appellant was noted to maneuver in the home "...by transferring with physical assistance of two person [sic] on a daily basis." (Exhibit D-2)
- 6) Additional PAS notes (Exhibit D-2) from the Appellant's June 2024 assessment noted, "Member could only leave her bed with ambulance personnel...has not been out of bed in months [sic]"
- 7) [REDACTED] the service agency for the Appellant, requested a discontinuation of ADW services to the Appellant. (Exhibit D-4)
- 8) This request (Exhibit D-4) was made specifically by the Appellant's case manager with [REDACTED]

- 9) [REDACTED] submitted her Aged and Disabled Waiver Notes (Exhibit D-4) regarding the Appellant with the discontinuation request to the Respondent.
- 10) The Appellant made multiple requests for two caregivers to assist with turning her in the bed. (Exhibit D-4)
- 11) The Respondent issued a notice (Exhibit D-5) dated September 20, 2024, to the Appellant which advised her ADW services would be discontinued because she "...can no longer be safely maintained in the community with ADW program services."
- 12) This notice (Exhibit D-5) provided the required adverse action notice, stating, "If you do not request a hearing within thirteen (13) days from the date of this notice, services will be discontinued."

APPLICABLE POLICY

The Bureau for Medical Services (BMS) Provider Manual, Chapter 501, § 501.38, provides in part:

The following require a Request for Discontinuation of Services form:

...

- The members can no longer be safely maintained in the community with ADW program services.

...

The BMS Provider Manual, Chapter 501, § 501.20, provides in part:

The following services are available to people receiving ADW services if they are deemed necessary and appropriate during the development of and listed on their Service Plan:

...

- Personal Attendant

...

The BMS Provider Manual, Chapter 501, §501.22.1, details Personal Attendant Services and provides in part (emphasis in original):

...

Ratio: 1:1

Service Unit: 15 minutes

Service Limits: Determined by Service Level Criteria and Service Level Limits

Prior Authorization Required: Yes

Documentation Requirements: All services provided to a member must be legibly documented on the Person-Centered Service Plan and maintained in the member's record

...

The BMS Provider Manual, Chapter 501, §501.22.2, provides in part:

The personal attendant's primary function is to provide hands-on personal care assistance outlined in the Person-Centered Service Plan. Such assistance also may include the supervision of members as provided in the Person-Centered Service Plan. As time permits, personal attendants may also provide other incidental services such as changing linens, meal preparation and light housekeeping such as sweeping, mopping, washing dishes and dusting. All incidental services are intended to maintain the member in the home. The scope of personal attendant service may include performing incidental services however, such activities may not comprise the entirety of the service...

DISCUSSION

The Appellant has requested a fair hearing to contest the Respondent's decision to discontinue the Appellant's ADW services. The Respondent's basis for this decision is the inability to safely provide ADW services to the Appellant in the community. The Respondent must show by a preponderance of the evidence that its decision to discontinue ADW services is correct.

ADW policy defines the responsibilities of Personal Attendants and the parameters of Personal Attendant Services. Personal Attendants are expected to "provide hands-on personal care assistance," and their responsibilities may include "supervision of members", and incidental housekeeping services intended to maintain the individual in the home. The personal care services include activities of daily living, and specifically include transferring. However, this policy also sets the ratio of Personal Attendants to Members (such as the Appellant) at 1:1.

Notes from the Appellant's most recent assessment indicated that she is confined to her bed most of the time. She was noted to require two-person assistance with transferring. Once she was approved for ADW services, the service limits of the program did not meet the Appellant's needs. Although the Appellant argued that the service agency could simply assign a Personal Attendant that was physically strong enough to perform a one-person transfer, there is no provision for this in policy. Because the Appellant was noted to be a two-person assist with transferring and walking, and that she "...could only leave her bed with ambulance personnel," her ADW services cannot be safely performed by one Personal Attendant. Policy limits the service to one Personal Attendant. The Respondent correctly established that the Appellant could not safely receive ADW services in the community in response to a discontinuation request and issued proper and timely notice of their decision. The Respondent's decision to discontinue ADW services is affirmed.

CONCLUSIONS OF LAW

- 1) Because of the Appellant’s documented medical needs, she requires a two-person assist with her activities of daily living in order to be maintained safely in the community.
- 2) Because ADW policy sets a 1:1 service ratio of personal attendants to members, ADW services cannot provide sufficient personal attendants to meet the Appellant’s medical needs.
- 3) Because ADW services cannot be provided to the Appellant sufficiently to safely maintain the Appellant in the community, the Respondent must discontinue the Appellant’s ADW services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to discontinue the Appellant’s Aged/Disabled Waiver (ADW) Services.

ENTERED this _____ day of November 2024.

Todd Thornton
State Hearing Officer