



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
1400 Virginia Street  
Oak Hill, WV 25901

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

April 5, 2016

[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 16-BOR-1406

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: [REDACTED]

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

██████████,

**Appellant,**

v.

**Action Number: 16-BOR-1406**

**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 March 31, 2016, on an appeal filed February 1, 2016.

The matter before the Hearing Officer arises from the January 25, 2016 decision by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent Appeared by ██████████, supervisor with ██████████, ██████████. Appearing as a witness for the Respondent was ██████████, Quality Control Reviewer with ██████████. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, owner of ██████████. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Child Care Parent Notification Letter Notice of Denial or Closure dated January 25, 2016
- D-2 Hearing Request signed February 1, 2016
- D-3 Hearing Request Notification
- D-4 Child Care Subsidy Policy §7.2

**Appellant's Exhibits:**

- A-1 Policy Interpretation Question dated January 5, 2011, from the United States Department of Health and Human Services Administration for Children and Families
- A-2 ██████████ Star Quality Initiative Program Rating Score Report for ██████████
- A-3 ██████████ Star Quality Initiative Program Rating Summary Report for ██████████

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 an active recipient of Child Care benefits.
- 2) The Department notified (D-1) the Appellant on January 25, 2016, of a recent policy change that no longer allowed payment to out-of-state Child Care providers.
- 3) The Appellant was given until February 29, 2016, to choose a Child Care provider located in West Virginia or her benefits would be terminated.
- 4) The Appellant utilized [REDACTED], a facility located in [REDACTED] as her Child Care provider.

### **APPLICABLE POLICY**

Child Care Subsidy Policy §7.2 states that in order to insure that parents are given a variety of child care options, Child Care Certificates may be used to purchase care at the following sites located within West Virginia. Parents may not use child care certificates to purchase care with out-of-state providers.

### **DISCUSSION**

The Appellant argued that she has used [REDACTED] as a provider for years and to change providers would be detrimental to her children. The Appellant contended that there is only one other facility-based provider in her area, a facility with which she had a bad experience previously.

The Appellant's witness argued that because the Child Care program receives federal funding to operate, the state of West Virginia may not restrict parental choice regarding the Child Care providers paid for through the subsidy program.

The information provided by the Appellant regarding parental choice (A-2) refers to the different types and categories of Child Care available to a parent through the subsidy program. The Lead Agency (West Virginia) may not impose regulations that do not allow a parent a choice between different categories of care, such as in-home care, family care or center based care.

The policy change that disallows payment to out-of-state providers does not restrict the type of care available to the Appellant through the subsidy program, and therefore does not violate the parental choice provision found in the Child Care Development Fund regulations.

### **CONCLUSIONS OF LAW**

- 1) Policy no longer allows subsidized Child Care payments to out-of-state providers.
- 2) The Appellant failed to choose an in-state provider prior to the termination of her Child Care benefits.
- 3) Based on the requirements found in policy, the Department was correct to terminate the Appellant's Child Care benefits.

### **DECISION**

It is the decision of the State Hearing Officer to **uphold** the Department's decision to terminate the Appellant's Child Care benefits.

**ENTERED this 5<sup>th</sup> day of April 2016**

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**Kristi Logan**  
**State Hearing Officer**