



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Earl Ray Tomblin
Governor

BOARD OF REVIEW
416 Adams St.
Fairmont, WV 26554

Karen L. Bowling
Cabinet Secretary

July 27, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. [REDACTED] WVDHHR
ACTION NO.: 16-BOR-2228

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,

Thomas E. Arnett
State Hearing Officer
Member, State Board of Review

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

cc: Scott Dettra, [REDACTED]

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

[REDACTED]

Appellant,

v.

Action Number: 16-BOR-2228

[REDACTED] **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 [REDACTED]. 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 July 27, 2016, on an appeal filed July 5, 2016.

The matter before the Hearing Officer arises from the July 5, 2016 decision by the Respondent to deny Appellant's application for subsidized Child Care benefits.

At the hearing, the Respondent appeared by Scott Dettra, [REDACTED]. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Respondent's Exhibits:

- D-1 E-mail correspondence regarding a Repayment Agreement for subsidized Child Care benefits (3/31/16) and a subsequent e-mail (4/4/16) with the corrected repayment amounts for January and February 2016
- D-1a Incorrect Child Care Benefit Repayment Agreement with amount overpaid in January and February 2016
- D-1b Corrected Child Care Benefit Repayment Agreement with the correct amount of overpayment in January and February 2016
- D-2 Child Care Parent Notification Letter Notice of Closure dated 3/31/16
- D-3 Child Care Parent Notification Letter Notice of Closure dated 4/4/16
- D-4 Client Contact Report (3/31/16 - 6/29/16)
- D-5 Child Care Parent Notification Letter Notice of Closure dated 4/14/16
- D-6 West Virginia Child Care Subsidy Policy & Procedures Manual §8.6
- D-7 Notification of New Applicants dated 7/5/16

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) On July 5, 2016, Appellant was notified (D-7) that her application for subsidized Child Care benefits was denied. Among the reasons noted for denial is #3 – “Payment in full of fees owed to WV DHHR. Fees of \$954.50 due to WV DHHR must be paid in full before application can be processed. Payment must be submitted in the form of a money order made payable to WV DHHR.”
- 2) Appellant was initially notified on March 31, 2016 (D-2 and D-1a) that she was required to repay \$1,055 in subsidized Child Care benefits received in January and February 2016.
- 3) The overpayment amount was revisited by Respondent (D-1) and the amount of overpayment was reduced to \$954.50. Appellant was notified (D-3 and D-1b) of the corrected repayment amount on April 4, 2016, and provided a corrected Repayment Agreement detailing the amount overpaid to each provider in January and February 2016.
- 4) The April 4, 2016 notice (D-3) indicates that Appellant was required to enter into a repayment agreement or repay the \$954.50 in Child Care benefits by 4/13/16, or her case would be closed. The notice further indicates – “If you fail to make your payment or enter into a repayment agreement you will not be allowed to reapply for services until you pay the amount owed in full in the form of a money order made payable to WV DHHR.”
- 5) Exhibit D-4 reveals that Appellant indicated during a telephone conversation (D-4, see contact 3 of 7 on April 11, 2016) that she was advised in January 2016 (when she reported that she was no longer employed and going to attend school) that she would qualify for an additional 30 days of Child Care benefits to conduct a job search. Appellant was advised that there was no job search request on file and that she would be required to repay Child Care benefits in full, or agree to monthly payments.
- 6) Appellant was notified in writing on April 14, 2016 (D-5) that she was no longer eligible to receive subsidized Child Care services. This notice states, in pertinent part: “You have failed to pay fees in the amount of \$954.50 to WV DHHR or enter in a repayment agreement as required. Your case is now closed effective 4/13/2016. Should you reapply in person at [REDACTED] a payment must be made in full.”

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy & Procedures Manual includes the following applicable regulations:

§4.2. Activity: Job Search for Active Recipients.

Interim child care may be provided for up to one month for current recipients who have lost employment or who have completed school and are looking for work. Recipients who contact the agency, complete a Job Search Request form (ECE-CC-1D) and request job search time shall be granted:

§4.2.1. One job search per six month assessment period.

§4.2.2. Job search time for 5 hours per day, 4 days per week.

§4.2.3. Time starting 30 days from the last date of previous employment.

§8.6.1.2. Clients who have been notified of the need to enter into repayment, but fail to respond within 13 days, are not eligible to participate in the subsidy system until the full amount due is paid.

DISCUSSION

The Appellant filed an appeal to contest the July 5, 2016 notice advising that her application for Child Care benefits was denied. Because the July 5, 2016 denial stems from a Child Care repayment claim that was effective April 13, 2016 - less than 90 days before her July 5, 2016 appeal - the issue of repayment was reviewed.

Respondent's testimony indicated that Appellant reported her last day of employment was on January 11, 2016, but that she did not report that information to the [REDACTED] until January 29, 2016. Because Appellant's Child Care case was undergoing a redetermination in February 2016 and could not be closed, Appellant was allowed until February 29, 2016 to provide requested verifications. Appellant's eligibility for Child Care benefits effective March 2016 was established, however, it was determined that Appellant continued to use Child Care services in January and February 2016 based on her previously approved employment activity, when she should have only used subsidized Child Care for an approved college class, one day a week, on Thursday.

Appellant conceded that she would be agreeable to entering into a repayment agreement, but she cannot pay the full amount. Appellant contended that she was advised by her case worker that Child Care benefits would remain unchanged because she had 30 days to look for other employment. Respondent noted, however, that an individual receiving Child Care benefits for attending college does not qualify for "job search" Child Care benefits. In addition, undisputed testimony proffered by Respondent reveals that there is no record that a Job Search Request form

was completed by the Appellant. When the Appellant was questioned about why she continued to use Child Care services after she was no longer employed, she testified that she needed the time to address academic issues at school. While she later indicated that she was also looking for employment, that testimony was unconvincing.

While policy does not specifically preclude individuals attending college “job search” Child Care benefits, there is no evidence to indicate a Job Search Request was submitted by the Appellant. As a result, the Appellant was notified that she had been overpaid Child Care benefits and was afforded the opportunity to enter into a repayment agreement, or pay \$954.50, by April 13, 2016. Because benefits were neither repaid, nor a repayment agreement established, the Respondent was correct to deny Appellant’s July 2016 application for subsidized Child Care benefits.

CONCLUSIONS OF LAW

- 1) Whereas the Appellant did not complete a Job Search Request form, the Appellant was not authorized to use Child Care services for a “job search” in January and February 2016.
- 2) The Appellant received \$954.50 in Child Care benefits to which she was not entitled.
- 3) A repayment claim was established against the Appellant and she was provided the opportunity to repay the benefits in full, or enter into a repayment agreement, by April 13, 2016.
- 4) Pursuant to Child Care Regulations, clients who have been notified of the need to enter into repayment, but fail to respond within 13 days, are not eligible to participate in the subsidy system until the full amount due is paid.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent’s action to deny Appellant’s application for Child Care benefits effective July 5, 2016.

ENTERED this ____ Day of July 2016.

**Thomas E. Arnett
State Hearing Officer**