



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

October 5, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2240

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 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: Fred Francis, Cabell County DHHR

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2240

**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 September 29, 2016, on an appeal filed May 20, 2016.

The matter before the Hearing Officer arises from the April 25, 2016 decision by the Respondent to establish a repayment claim for Child Care benefits received by the Appellant from May 2010 through February 2012.

At the hearing, the Respondent appeared by Fred Francis, Criminal Investigator. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for Child Care Services signed May 6, 2010
- D-2 Status Review Form signed September 30, 2010
- D-3 Status Review Form signed April 7, 2011
- D-4 Status Review Form signed September 29, 2011
- D-5 Combined Application and Review Form dated May 24, 2010
- D-6 Supplemental Nutrition Assistance Program (SNAP) Periodic Review Form dated October 25, 2010
- D-7 Combined Application and Review Form dated December 14, 2010
- D-8 Combined Application and Review Form dated May 12, 2011
- D-9 Combined Application and Review Form dated November 28, 2011
- D-10 Application for Low Income Energy Assistance Program dated May 12, 2011

- D-11 WV Health Care Coverage for Kids and Expectant Moms Renewal Application signed October 6, 2010
- D-12 WV Health Care Coverage for Kids and Expectant Moms Renewal Application dated February 4, 2011
- D-13 Application for School Clothing Allowance dated July 21, 2011
- D-14 Client Payment History Report for [REDACTED], [REDACTED] and [REDACTED] from May 2010 through February 2012, Case ID 20201377
- D-15 Client Payment History Report for [REDACTED] and [REDACTED] from July 2010 through February 2012, Case ID 20202213
- D-16 Child Care Attendance Sheets for [REDACTED], [REDACTED] and [REDACTED] from May 2010 through February 2012

Appellant’s Exhibits:

- A-1 Form W-2 Wage and Tax Statement for 2010 and Employee Assignments

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 a recipient of Child Care benefits for her three (3) children, [REDACTED].
- 2) The Department notified the Appellant on April 25, 2016, that she was issued more Child Care benefits than she was eligible to receive from May 2010 through February 2012 and that a repayment claim of \$14,131 had been established.
- 3) The Department presented Child Care Applications and Status Review Forms (D-1, D-2, D-3 and D-4) dated May 5, 2010, September 30, 2010, April 7, 2011 and September 29, 2011, which listed only four (4) household members, the Appellant and her children.
- 4) The Department presented application and review forms for SNAP (D-5, D-7, D-8, D-9) and Medicaid benefits (D-11 and D-12) dated May 24, 2010, December 14, 2010, May 12, 2011 and November 28, 2011, in which the Appellant listed five (5) household members, [REDACTED], father of [REDACTED] and her three (3) children.
- 5) The Department contended that because the Appellant’s household consisted of two (2) parents, both parents were required to be in a work activity to be eligible for Child Care services.

- 6) No employment had been reported for ██████████ by the Appellant for the purposes of SNAP benefits, therefore the Department contended that the Appellant was ineligible for Child Care services from May 2010 through February 2012.

APPLICABLE POLICY

Child Care Subsidy Policy §1.2.31 defines a parent as a parent by blood, marriage or adoption; or a legal guardian or **other person standing in loco parentis** [emphasis added], such as foster parents, grandparents, other relatives, and persons receiving TANF benefits for children only.

Child Care Subsidy Policy §2.3.4.11 states that the parent is responsible for reporting changes in family size, including the addition of a parent of a child in the household, within five (5) days.

Child Care Subsidy Policy §3.2.4 states if both parents, or a parent and step-parent are in the home, child care services cannot be approved for work or training related needs unless both are working or attending school/training.

Child Care Subsidy Policy §3.2.5 states in cases where parents have joint custody or share custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families. Each parent is responsible for paying the fee on the days the child is in his or her custody.

Child Care Subsidy Policy §3.6.1 states any recipient of child care assistance who is an employee in the private sector must work at least 20 hours per week. If the recipient is not working at least 20 hours per week, the recipient will not be eligible for child care services.

Child Care Subsidy Policy §4.0 to be eligible for child care assistance, families must demonstrate a need for care. In general, that means that the head of household must be involved in a qualifying activity that prevents the parent from providing care and supervision of the children in the household during the time the parent is participating in the activity. If there are two parents in the home, both must be involved in a qualifying activity.

Child Care Subsidy Policy §5.1.7 states although West Virginia does not recognize common law marriage, a couple living together as spouses will be considered members of the same family if they are both biological, adoptive, or foster parents of a child or children living in the household. However, if a couple resides together and each have a child of their own and share no children in common, they are two separate families and entered into FACTS as such.

Child Care Subsidy Policy §8.3.2 states misrepresentation occurs when a specific child care policy section is violated as a result of the information not having been reported by the client or reported falsely. If the CCR&R Agency becomes aware that the client/provider is attempting to or has received services/payments to which they are not entitled, the CCR&R worker must take corrective action to prevent further payments from occurring. Improper payments made as a result of misrepresentation shall be referred to Investigations and Fraud Management (IFM) when the amount exceeds \$1,000.00. If the amount does not exceed \$1000.00, the CCR&R shall initiate repayment procedures. A willfully false statement is one that is deliberately given, with

the intent that it be accepted as true, with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client/provider knew his statement was false.

The Recipient shall repay to the agency any child care monies paid on their behalf during the period of ineligibility.

DISCUSSION

The Appellant testified that she had an on/off relationship with [REDACTED], stating that he was not always in the home during the period in question. [REDACTED] testified that he would come and go, and would often be out of the home for weeks at a time. The Appellant alleged that the father of [REDACTED] and [REDACTED] used her Child Care Provider during the times when he had the children in his care.

The Appellant submitted verification of employment (A-1) for [REDACTED] to show that he was employed during a portion of the repayment claim period. The Appellant contended that she did not think [REDACTED] was responsible for the care of her children, only their child in common.

The Appellant reported [REDACTED] has a household member for SNAP and other programs of assistance, and while she claimed he was not continually present in her household during the repayment claim period, her receipt of benefits on his behalf places him in her household.

Policy stipulates that when both parents reside together, both parents must be in a qualified work activity to be eligible for Child Care benefits. [REDACTED] was a member of the Appellant's household, and not working at least 20 hours per week. The Appellant was ineligible to receive Child Care benefits for their child, [REDACTED], from May 2010 through February 2012.

Policy stipulates that a parent is defined as an adult standing in *locos parentis* for a child. While [REDACTED] was not the biological father or legal step-father of [REDACTED], Child Care attendance sheets show that he was responsible for dropping off and picking up the children from their provider, thereby showing he was acting in the role as a parent to [REDACTED], and could have been charged with their care while the Appellant worked. The Appellant was ineligible to receive Child Care benefits for [REDACTED] from May 2010 through February 2012.

The Department failed to provide the calculations used in the determination of the Appellant's Child Care benefits repayment claim of \$14,131. The total amount of Child Care benefits paid for [REDACTED] under the Appellant's case was \$9,889.50 (D-14). The Appellant is not responsible for Child Care benefits paid for the care of [REDACTED] under a different case (D-15).

CONCLUSIONS OF LAW

- 1) Policy stipulates that both parents must be working a minimum of 20 hours per week, if residing in the same household, to qualify for Child Care benefits.

- 2) Based on the preponderance of evidence submitted, [REDACTED] was residing in the Appellant's household from May 2010 through February 2012.
- 3) [REDACTED], biological father of [REDACTED], met the definition of a parent of [REDACTED] and [REDACTED] as found in policy.
- 4) [REDACTED] was not working a minimum of 20 hours per week during May 2010 through February 2012.
- 5) The Appellant was ineligible to receive Child Care benefits from May 2010 through February 2012 and is required to repay benefits paid on her behalf for which she was not eligible.

DECISION

It is the finding of the State Hearing Officer that the Appellant was ineligible to receive Child Care benefits from May 2010 through February 2012. This case is REMANDED back to the Department to correctly calculate the Appellant's repayment claim amount for this time period.

ENTERED this 5th day of October 2016

**Kristi Logan
State Hearing Officer**