



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Earl Ray Tomblin
Governor

Karen L. Bowling
Cabinet Secretary

November 10, 2016

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 16-BOR-2519

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Pam Williams, Department Representative

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

██████████,

Appellant,

v.

Action Number: 16-BOR-2519

**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 15, 2016, on an appeal filed August 17, 2016.

The matter before the Hearing Officer arises from the August 16, 2016 decision by the Respondent to establish a child care repayment claim against the Appellant.

At the hearing, the Respondent appeared by Pam Williams. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for Child Care services, dated July 29, 2016
- D-2 Email dated July 29, 2016
- D-3 Child Care Subsidy Policy, §2.3.4 (excerpt)
- D-4 Child Care Attendance Sheet regarding the Appellant's children, for the months of May 2016 through July 2016
- D-5 Child Care Subsidy Policy, §8.3.3, §8.4 (excerpt)
- D-6 Emails dated August 10, 2016 and August 15, 2016
- D-7 Notice of decision, dated August 16, 2016
- D-8 Child Care Benefit Repayment Agreement form and calculation sheet
- D-9 Hearing request form

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's parents were recipients of child care services from the Respondent.
- 2) The Appellant's parents initially received child care services while they had custody of the Appellant's children.
- 3) The Appellant regained physical custody of her children on May 26, 2016. (Exhibit D-2)
- 4) The Appellant continued to use the child care services – which were established based on the eligibility factors of her parents – until July 29, 2016. (Exhibit D-4)
- 5) The total overpayment amount for this period is \$2393. (Exhibit D-6)
- 6) On August 16, 2016, the Respondent issued a notice (Exhibit D-7) to the Appellant which reads, in part, "...you owe \$1196.50 to the State of WV for the time period mentioned above. This amount is half of what is owed to the State, the grandparent's [*sic*] will be responsible for the other half."

APPLICABLE POLICY

Child Care Policy provides for the establishment of repayment claims based on improper payments due to misrepresentation, worker error or programmatic infractions. (Child Care Subsidy Policy, §8.3)

Child Care Policy requires a child to "reside with the head of household applying for services" in order to be eligible for child care services. (Child Care Subsidy Policy, §3.0)

DISCUSSION

The Respondent established a repayment claim against the Appellant for child care services improperly paid to her. The Respondent must show by a preponderance of the evidence that these services were improperly paid to the Appellant.

The evidence and testimony from the hearing clearly demonstrate that the Appellant received child care services improperly during the period in question. Initially the Appellant's parents

applied for the child care services while the Appellant's children were in their custody. Instead of reporting the change in custody or reapplying for those services based on her own eligibility factors, the Appellant simply continued to use services based on her parents' eligibility factors. Once the Appellant's children were no longer residing "with the head of household applying for services," neither the Appellant nor her parents continued to be eligible for those services without a determination of eligibility based on the Appellant's circumstances. The Respondent was clearly correct to establish a claim to collect the improperly provided child care services on this basis. The Appellant did not dispute the specific calculation of this claim, or the Respondent's determination that she is responsible for half of the amount owed.

CONCLUSION OF LAW

Because the Appellant utilized child care services for which she was ineligible, the Respondent must establish a claim to recover those improperly paid services.

DECISION

It is the decision of the State Hearing Officer to **uphold** the action of the Respondent to establish a child care repayment claim against the Appellant.

ENTERED this ____ Day of November 2016.

**Todd Thornton
State Hearing Officer**