



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

February 25, 2016

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-3618

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Kristall Chambers, Department Representative

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

██████████,

Appellant,

v.

Action Number: 15-BOR-3618

**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 January 21, 2016, on an appeal filed December 3, 2015.

The matter before the Hearing Officer arises from the November 30, 2015 decision by the Respondent to terminate the Appellant's child care services and establish a repayment claim for services received.

At the hearing, the Respondent appeared by Kristall Chambers and Sarah Wigal. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Client Contact Report, entry date November 3, 2015
- D-2 October 2015 attendance sheets for the Appellant's children from her childcare provider
- D-3 Notice of decision, dated November 3, 2015
- D-4 Client Contact Report, entry date November 10, 2015
- D-5 Hearing request form
- D-6 Notification letter (undated)
- D-7 Notification letter (undated)
- D-8 Client Contact Report, entry dated November 30, 2015

- D-9 Hearing request form
- D-10 Client Contact Report, entry dated December 14, 2015
- D-11 Client Contact Report, entry dated December 15, 2015
- D-12 November 2015 attendance sheets for the Appellant's children from her childcare provider

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 services through the Respondent.
- 2) The Respondent notified the Appellant (Exhibit D-7) that her child care services were terminated.
- 3) The Respondent separately notified the Appellant (Exhibit D-3) that a repayment claim was being established for a period in which she was ineligible for child care services.
- 4) The basis of both decisions by the Respondent was the use of the Appellant's child care services by the father of one of her children.
- 5) The Respondent presented evidence of this usage in the form of attendance sheets (Exhibits D-2 and D-12) from the Appellant's child care provider. These sheets show [REDACTED], the father of one of the Appellant's children, signed her children in and out of the child care provider site multiple times in October and November 2015.
- 6) The Appellant did not provide any verification that Mr. [REDACTED] does not reside with her, either prior to or during the hearing.

APPLICABLE POLICY

Child Care Policy requires case managers to "verify questionable or inconsistent information any time there is doubt about a client's situation" to ensure program integrity. (Child Care Subsidy Policy, §8.1)

Child Care Policy requires "biological parents residing on the same premises" to be included in the same household (Child Care Subsidy Policy, §5.1.9) and provides a list of acceptable forms of verification that biological parents no longer share the same residence. (Child Care Subsidy Policy, §3.4.2)

Child Care Policy lists the responsibilities of the parent/recipient of services, including “[s]igning children in and out of care on a daily basis.” (Child Care Subsidy Policy, §2.3.4.6)

Child Care Policy indicates the Respondent must collect improper payments made to child care recipients either caused as a result of “willful misrepresentation or...simply the result of a client/provider’s genuine confusion over subsidy program rules and responsibilities.” (Child Care Subsidy Policy, §8.3.3)

DISCUSSION

The Respondent discovered improper use of the Appellant’s child care certificate by another individual and asked the Appellant to verify the “questionable or inconsistent information.” Because it is the parent’s responsibility to sign a child in and out of care from a provider, the Respondent was bound by policy to take this step.

The Respondent notified the Appellant of the applicable options in her situation: if Mr. [REDACTED] was residing with her, she would need to take the necessary steps to add him to her case; if not, she would need to verify him as residing elsewhere. The Appellant did neither, and the Respondent is correct to close services on this basis. The Appellant stated Mr. [REDACTED] resided elsewhere, but that she did not verify this because she was told to wait and present her evidence during this hearing. However, the Appellant did not provide evidence of any kind at hearing.

The Respondent was also correct to establish a claim to collect services overpaid to the Appellant during the period in which she was ineligible. Policy clearly establishes the signing in and out of children from care as the responsibility of the parent. In this hearing, both parties disputed how regularly this could occur, but policy itself does not allow for occasional substitution of this parental role. Evidence in the form of attendance sheets showed the Appellant was not eligible for these services and provided the necessary details of when the Appellant was not eligible. The only dispute of these facts presented by the Respondent was hearsay and unconvincing testimony from the Appellant.

CONCLUSION OF LAW

Because child care policy requires a parent to sign their child or children in and out of care, the Appellant was ineligible for services by allowing another person to take this role and the Respondent was correct to terminate the Appellant’s ongoing services and establish a repayment claim for a past period of ineligibility on this basis.

DECISION

It is the decision of the State Hearing Officer to **uphold** the action of the Respondent to terminate the Appellant's child care services and establish a repayment claim during a period of ineligibility for those services.

ENTERED this ____ Day of February 2016.

**Todd Thornton
State Hearing Officer**