



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

**Bill J. Crouch**  
Cabinet Secretary

**Board of Review**  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 79326

**Jolynn Marra**  
Interim Inspector General

September 25, 2018



RE: [REDACTED] v. WVDHHR  
ACTION NO.: 18-BOR-2184

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson  
State Hearing Officer  
State Board of Review

Enclosure: Appellant's Recourse  
Form IG-BR-29

cc: Kelly Coen, Child Care Resource and Referral Agency

---

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

██████████,

**Appellant,**

v.

**ACTION NO.: 18-BOR-2184**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on September 18, 2018, on an appeal filed August 10, 2018.

The matter before the Hearing Officer arises from the July 31, 2018 determination by the Respondent to deny the Appellant's application for Child Care Services eligibility because of the Appellant's failure to enter into a repayment agreement for child care payments made on the Appellant's behalf during March and April 2012.

At the hearing, the Respondent appeared by Kelly Coen, Child Care Coordinator. Appearing as witness for the Respondent was ██████████, Director of the Child Care Resource Center. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Child Care Parent Services Agreement, dated March 26, 2012
- D-2 Child Care Certificate, issued March 30, 2012
- D-3 Application for Child Care Services, dated March 26, 2012
- D-4 New Employment Verification, signed March 29, 2012
- D-5 Client Contact Report, dated April 25, 2012
- D-6 Child Care Parent Notification Letter, dated April 25, 2012
- D-7 Notification of New Applicants, dated July 16, 2018
- D-8 ██████████ Payroll Summary, dated March 24 through April 9, 2012
- D-9 Child Care Attendance Sheet, dated March 2012
- D-10 Child Care Attendance Sheet, dated April 2012
- D-11 Child Care Parent Notification Letter, dated July 31, 2018
- D-12 Education Registration Screen Print, Spring 2012
- D-13 Child Care Benefit Repayment Agreement, unsigned
- D-14 Request for Conference, dated August 10, 2018
- D-15 Child Care Subsidy Policy (September 2016) §§ 4.0, 4.1, 7.7.2, and 7.8

## **Appellant's Exhibits:**

A-1 Letter by [REDACTED], dated September 18, 2018

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 following Findings of Fact are set forth.

### **FINDINGS OF FACT**

- 1) The Appellant was a recipient of child care services for her minor children, [REDACTED] and [REDACTED], from March 26 through May 8, 2012. (Exhibits D-1, D-2, and D-6)
- 2) [REDACTED] was approved to provide child care for the Appellant's children when the Appellant was working. (Exhibit D-2)
- 3) On April 25, 2012, the Respondent received an anonymous voicemail reporting that the Appellant was unemployed. (Exhibit D-5)
- 4) On April 25, 2012, the Respondent issued a notice requesting the Appellant submit initial 30 days and most recent paystubs from the [REDACTED] by May 8, 2012 or her case would be closed on May 8, 2012. (Exhibits D-5 and D-6)
- 5) The Appellant failed to submit the requested paystubs and her case was closed on May 8, 2012.
- 6) On July 16, 2018, the Appellant reapplied for child care services.
- 7) On July 16, 2018, the Respondent issued a notice advising the Appellant that her application was pending upon verification of employment, proof of residency, and verification of her last day employed at [REDACTED] and first 30 days of paystubs from [REDACTED] May 2012. (Exhibit D-7)
- 8) The July 16, 2018 notice advised the Appellant that her application would be denied if information was not received by July 29, 2018. (Exhibit D-7)
- 9) The Appellant received pay for 26.75 hours of employment at [REDACTED] between March 24 and April 9, 2012. (Exhibit D-8)
- 10) [REDACTED] provided child care for the Appellant's children from March 26 through April 29, 2012. (Exhibits D-9 and D-10)
- 11) On July 31, 2018, the Respondent issued a notice advising the Appellant that she was no longer eligible for child care services because she owed a total repayment of \$852 based on an audit of her receipt of child care services in March and April 2012. (Exhibit D-11)
- 12) The July 31, 2018 notice advised the Appellant that if she did not enter into a repayment agreement in the amount of \$852, her case would be closed and child care payments would cease on August 13, 2018. (Exhibit D-11)

- 13) On August 6, 2018, the Appellant submitted verification of registration for an education course from January 24 through May 1, 2012. (Exhibit D-12)
- 14) The Respondent adjusted the amount of repayment and drafted an unsigned Child Care Benefit Repayment Agreement in the amount of \$715.50. (Exhibit D-12)

### **APPLICABLE POLICY**

#### **Child Care Subsidy Policy and Procedures Manual (CCSPP) (2010) §2.3.4.11 provides in part:**

As a recipient of child care services, the parent has the responsibility to report changes in employment within five days. Failure to report changes to the agency may result in case closure, repayment of services used for time not approved, and/or 30-day penalty closure before services can be reopened.

#### **CCSPP Manual (2010) §2.3.5.1 provides in part:**

If a recipient of child care services fails to fulfill parent responsibilities, the worker shall give a written warning regarding specific problems, noting that subsequent abuses may result in a 30-day penalty closure.

#### **CCSPP Manual (2010) §2.3.5.2 provides in part:**

When the need for child care services no longer exists because a parent has lost their job, the case will be closed and no further payment made. The recipient shall repay to the agency any child care monies paid on their behalf during the period of ineligibility.

#### **CCSPP Manual (2010) §4.1.1 provides in part:**

Income-eligible parents who are working and who have children who need care are considered to need child care. The client must verify employment by submitting one month's worth of check stubs, no older than 45 days

#### **CCSPP Manual (2010) §8.1 provides in part:**

It is the responsibility of every Child Care Resource and Referral (CCR&R) employee and every DHHR employee to minimize the opportunity for improper payments by performing his job duties .... Although the client is the primary source of information and is fully responsible for it, the case manager should not hesitate to verify questionable or inconsistent information any time there is doubt about a client's situation. [emphasis added]  
The signature page of the child care application and status check gives the worker the authority to investigate discrepancies and suspicions.

#### **CCSPP Manual (2010) §8.3.2 provides in part:**

Misrepresentation occurs when a specific child care policy section is violated because of information not having been reported by the client or reported falsely.

**CCSPP Manual (2010) §8.3.2.3 provides in part:**

When a parent continues to use child care services when the need no longer exists because the parent has lost his job, the case will be closed and no further payment made. As soon as the worker is aware that the client is using services when the need no longer exists, the worker should: [emphasis added]

- A. Immediately call the child care provider and tell them that effective the next business day, the agency will no longer be responsible for payment
- B. Send an immediate closure notice to the parent, advising them of the status of their case and the need for repayment
- C. The recipient shall repay to the agency any child care monies paid on their behalf during the period of ineligibility.

**CCSPP Manual (2016) §3.0 provides in part:**

In order to be eligible for child care services, the family must verify the identify of the head of household, meet the WV residency requirements, income requirements, and activity requirements.

**CCSPP Manual (2016) §4.0 provides in part:**

To demonstrate need for child care, 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.

**CCSPP Manual (2016) §4.1.1.1 provides in part:**

To verify that the client is engaged in an employment activity, the client must submit one month's worth of check stubs, no older than 45 days. [emphasis added]

**CCSPP Manual (2016) §8.6.1.2 provides in part:**

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's child care case was closed in 2012 due to non-receipt of requested employment verification. In July 2017, the Appellant applied for child care services and received a notice that she was no longer eligible for child care services because she owed a total repayment of \$852 for child care payments made on her behalf in March and April 2012. The notice advised the Appellant that if she did not enter into a repayment agreement in the amount of \$852, her case would be closed and child care payments would cease on August 13, 2018. The Respondent argued that the Appellant was required to repay child care payments made on her behalf in 2012 when she received child care services while not engaged in a qualifying activity. The Appellant contested that she owed the repayment and argued that [REDACTED] should be responsible for partial repayment as she was the provider that received payment for child care.

To prove that the establishment of repayment was correct, the Respondent had to demonstrate that child care payments were made on the Appellant's behalf during a period that she was ineligible to receive child care services due to not being engaged in an employment activity. To prove that the Respondent correctly denied the Appellants July 2018 application for child care eligibility, the Respondent had to demonstrate that the Appellant owed a repayment.

### *Repayment*

The Respondent testified that there was a delay in initiating a repayment because the Appellant did not submit verification of her employment dates until her 2018 application. Pursuant to policy, the CCR&R employee has the authority and responsibility to investigate discrepancies and suspicions and verify questionable information any time there is doubt about a client's situation. Policy provides that the worker had the responsibility of notifying the Appellant of her repayment responsibility as soon as the worker became aware she was using services when the need no longer existed. Although the worker failed to notify the Appellant of repayment responsibility in a timely manner, policy requires the Respondent to recover repayments in circumstances wherein the case manager did not collect appropriate case verifications and process the case correctly, and more than two years have passed since the misrepresentation period ended.

The Respondent submitted into evidence child care attendance sheets that reflected the dates [REDACTED] provided child care for the Appellant's children. The Appellant argued that she couldn't recall details from 2012 regarding when she ceased working and ceased receiving child care. The Appellant contended that [REDACTED] would not have kept her children if the Appellant was not working. The Appellant argued that [REDACTED], now deceased, could have recorded extra dates of child care and forged the Appellant's signature on the child care attendance sheets; however, the Appellant was unable to identify any specific signature that appeared questionable.

The evidence established that the Appellant received wages during the pay period March 24 through April 9, 2012. The Respondent argued that the evidence confirmed that the Appellant was employed by the [REDACTED] from March 24 through March 29, 2012. The [REDACTED] Payment Summary reflected a handwritten notation, "March 24, 2012 to March 29, 2012". The Payment Summary demonstrated that the Appellant received pay and did not reflect corroboration of employment dates.

The Respondent argued that they are required to use employment verification and attendance sheets to determine whether a repayment is owed and that based on the evidence, the Appellant was required to repay child care costs for care received when she was not employed at the [REDACTED] beyond March 29, 2012. The Respondent testified that an adjustment to the amount of repayment owed was made when the Appellant verified that she was enrolled in a qualifying education activity until May 1, 2012. The Respondent's evidence did not clarify the dates that the Appellant received child care services for which she was not eligible. No information was provided to reflect what rates were used to calculate the repayment amount. No evidence was entered to prove that child care payments were issued to [REDACTED] on the days listed on the March and April 2012 child care attendance sheets.

The Respondent did not establish the dates that the Appellant was employed at the [REDACTED] or that child care payments were made on the Appellant's behalf during a period wherein she was ineligible to receive child care services due to not being engaged in an employment activity. The Respondent did not prove by a preponderance of evidence that the Appellant owed a repayment amount for child care payments made on her behalf in March and April 2012.

### *Eligibility*

The July 16, 2018 notice advised the Appellant that her application was pended upon verification of employment, proof of residency, and verification of her last day employed at [REDACTED] and first 30 days of paystubs from [REDACTED] May 2012. The notice advised the Appellant that her application would be denied if the verifications were not received by July 29, 2018. Policy requires an applicant to verify income and activity requirements for child care services eligibility. Pursuant to policy, employment must be verified by the client's submission of one month's worth of check stubs not more than 45 days old. Policy does not stipulate that to meet eligibility requirements on a new application, an applicant must submit employment verification for a period wherein the applicant previously received child care services. The employment verification requested by the Respondent exceeded the policy requirement that employment verification paystubs not be more than 45 days old; therefore, the Appellant's application should not have been pended contingent upon receipt of verification of her 2012 employment.

The Respondent issued a notice advising the Appellant that she was no longer eligible for child care services because she owed a repayment and that her case would be closed if she did not enter into a repayment agreement by August 13, 2018. Because the Respondent failed to prove that the Appellant owed a repayment, the Respondent's decision to deny the Appellant's eligibility for child care services and close her case for failure to enter into a repayment agreement was incorrect.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, the Respondent may obligate the Appellant to repay child care payments made on the Appellant's behalf during a period the Appellant was not eligible for child care services because of failure to participate in a qualifying activity.
- 2) The evidence failed to establish the dates that the Appellant was not engaged in a qualifying activity during March and April 2012.
- 3) The evidence failed to prove that child care payments were made on the Appellant's behalf during a period wherein she was ineligible to receive child care services.
- 4) The Respondent did not prove by a preponderance of evidence that the Appellant owed a repayment amount for child care payments made on her behalf in March and April 2012.
- 5) Policy provides that 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 child care subsidy system until the full amount due is paid.
- 6) Because the Respondent failed to prove that the Appellant owed a repayment, the Respondent incorrectly denied the Appellant's eligibility for child care services for failure to enter into a repayment agreement.

**DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to establish a repayment claim against the Appellant for child care payments made on the Appellant's behalf during March and April 2012. It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant eligibility for child care services for failure to enter into a repayment agreement.

ENTERED this 25<sup>th</sup> day of September 2018.

---

**Tara B. Thompson**  
State Hearing Officer