



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

October 4, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO: 18-BOR-2301

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

Cc [REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

██████████,

Appellant,

v.

Action Numbers: 18-BOR-2301

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 October 3, 2018, on an appeal filed August 31, 2018.

The matter before the Hearing Officer arises from the August 27, 2018 decision by the Respondent to terminate Child Care benefits.

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

Department's Exhibits:

- D-1 West Virginia Child Care Subsidy Policy & Procedures Manual Section 4.3.5
- D-2 Electronic Mail Transmission dated August 24, 2018
- D-3 Electronic Mail Transmission dated August 30, 2018
- D-4 Child Care Parent Notification Letter Notice of Denial or Closure dated August 27, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Child Care benefits.
- 2) The Appellant co-owns a cleaning business that has been established as a Limited Liability Company-Partnership.
- 3) The Respondent's Child Care Policy changed effective August 2018. The policy now considers a sole proprietorship to be the only type of self-employment situation for which an individual can receive a Child Care Subsidy.
- 4) The Respondent sent the Appellant a Child Care Parent Notification Letter Notice of Denial or Closure on August 27, 2018 (D-4), informing her that her Child Care benefits would stop effective September 9, 2018.

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy & Procedures Manual Section 4.3.5.1 (effective date August 2018) (D-1) defines a sole proprietorship as a business run by an individual. The owner is the business; or the owner has all the profits and losses of the business. The owner also has all the control and all the liability from the business operations. Business taxes are paid by the owner through his or her personal income tax return.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 4.3.5.1.A, B and C state that an individual who is the owner of a business type other than a sole proprietorship is not eligible for a Child Care Subsidy. An individual who receives regular/irregular income or salary from any business type other than a sole proprietorship and owns any portion of that business is not eligible for a Child Care Subsidy. An individual participating as a partner of any business is not eligible for a Child Care Subsidy.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 6.6 states that any notification of negative action must be in writing on the Parent Notification Letter (DAY-0177 or DAY-0179), including denial of an application and termination of services. The form letter shall include the specific negative action, with citation of specific policy and a description of any action, if applicable, on behalf of the client that resulted in the negative action. The original Notification Letter (DAY-0177 or DAY-0179) shall be sent to the parent, with a copy saved to FACTS and, if a paper file is maintained, a copy put in the correspondence block of the record. The negative action shall also be documented in the FACTS Contact screen. Most negative actions affecting the recipients of Child Care, other than denial of an application, cannot be taken until 13 calendar days after the client has been notified.

DISCUSSION

Child Care Policy states that an individual who is the owner of a business - other than a sole proprietorship - is ineligible to receive a Child Care Subsidy. An individual who receives income or salary from any business type other than a sole proprietorship and owns any portion of that business is not eligible for a Child Care Subsidy, and an individual participating as a partner of any business is not eligible for a Child Care Subsidy. Most negative actions affecting the recipients of Child Care, other than denial of an application, cannot be taken until 13 calendar days after the client has been notified.

The Appellant testified that she and a relative own a cleaning service that has been specified as a Limited Liability Company-Partnership, and that the co-owners split all profits and losses from the business equally. While she did not dispute the policy citation, she contended that the Respondent should have given her more than 13 days of notice to find a new career or restructure her business before the Child Care Subsidy ended. She indicated that she had just completed a case review in August 2018 and should have been informed of the new requirement at that time. The Respondent's representative testified that [REDACTED] was required to send clients a 13-day notice of closure letter immediately when the policy went into effect.

While the Appellant's concerns are noted, the Respondent acted in accordance with policy and adhered to advance notification requirements in terminating Child Care benefits.

CONCLUSION OF LAW

The Respondent's action to terminate Child Care services based on self-employment regulations is affirmed.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Respondent's decision to terminate Child Care benefits.

ENTERED this 4th Day of October 2018.

**Pamela L. Hinzman
State Hearing Officer**

