



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

November 9, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO: 18-BOR-2438

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-2438

**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 November 7, 2018, on an appeal filed September 12, 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, ██████████. Appearing as a witness for the Respondent was Denise Richmond, Child Care Policy Specialist, WVDHHR. The Appellant appeared *pro se*. The witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Child Care Parent Notification Letter Notice of Denial or Closure dated August 30, 2018
- D-2 Change of Information Notification dated September 6, 2018
- D-3 Notarized statements of ██████████ and ██████████ submitted on September 7, 2018
- D-4 Bills from ██████████, submitted on September 7, 2018
- D-5 Bills from ██████████ submitted on September 7, 2018
- D-6 Voter's Registration Card submitted on September 10, 2018
- D-7 Request for Pre-Hearing Conference
- D-8 Provider Notification Letter- Parent's Eligibility for Child Care dated August 30, 2018

D-9 Divorce Petition filed in [REDACTED] County Family Court on October 23, 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 received notification (D-1) informing her that her Child Care benefits would stop effective September 12, 2018 if she failed to verify her participation in an approved activity.
- 3) The Appellant's husband is self-employed, and the Child Care case closure occurred because of a change in policy which states that owners of any business type other than a sole proprietorship are ineligible to receive a Child Care subsidy.
- 4) The Appellant provided Change of Information Notification (D-2) to the Respondent on September 6, 2018, indicating that she and her husband were separated effective September 1, 2018.
- 5) The Appellant provided notarized statements from a friend and her Child Care provider (D-3) on September 7, 2018, documenting that the Appellant and her husband live in separate residences.
- 6) The Appellant provided utility bills for [REDACTED], and [REDACTED], (D-4 and D-5) to demonstrate that she and her husband maintain separate residences.
- 7) The Appellant's Child Care case was closed from September 12, 2018 to October 30, 2018 due to lack of verification of separate residency, and the Appellant has since reapplied for benefits.
- 8) The Appellant provided a copy of a Divorce Petition she filed in [REDACTED] County Family Court on October 23, 2018 (D-9). The Respondent's witness indicated that the Divorce Petition is sufficient to show that the Appellant is separated from her husband.

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy & Procedures Manual Chapter 2.2.4.11.B.2 provides the following information concerning subtractions to household size (child, spouse or biological parent of children):

If the case worker has reason to believe that the client is not accurately reporting family size, the case worker may request verification by legal documentation (i.e. legal separation papers, divorce decree, notice of removal of child from home). If no legal documentation is available, two notarized statements by persons other than relatives stating that the person is no longer in the home may be substituted.

West Virginia Child Care Subsidy Policy & Procedures Manual Chapter 5.1.8 states that a family member who is away from the family residence for reasons of employment, education, training, shared custody or military deployment and who returns regularly, or is expected to return, shall be considered as a member of the household.

DISCUSSION

Child Care Policy states that if the case worker has reason to believe that the client is not accurately reporting family size, the case worker may request verification by legal documentation (i.e. legal separation papers, divorce decree, notice of removal of child from home). If no legal documentation is available, two notarized statements by persons other than relatives stating that the person is no longer in the home may be substituted. A family member who is away from the family residence for reasons of employment, education, training, shared custody or military deployment and who returns regularly, or is expected to return, shall be considered as a member of the household.

The Appellant testified that she has had ongoing marital problems, but the separation occurred in December 2017 after her husband's son was released from state custody. She stated that her husband's son moved into their home on [REDACTED] and became a threat to the family. The Appellant testified that her husband moved back to his former residence at [REDACTED], where his business is also located. She stated that she did not report the change for her Child Care benefits because she did not believe it would have an impact on the case.

The Respondent's witness testified that the Appellant had previously reported that her husband was expected to return to her residence. The Appellant clarified that she meant her husband would visit her residence to participate in family activities, but had no plans to return to the home to live.

The Appellant provided credible testimony to establish that her husband was not residing with her in September 2018 at the time of case closure, and she had provided the Respondent with the two notarized statements required by policy on September 7, 2018 to verify that he was no longer in the home. Therefore, the Respondent's decision to terminate Child Care benefits cannot be affirmed.

CONCLUSION OF LAW

The Respondent's action to terminate Child Care services for the period of September 12, 2018-October 2018 cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Respondent's action to terminate Child Care benefits. As the Appellant has reapplied for Child Care benefits, eligibility should be considered retroactive to September 12, 2018.

ENTERED this 9th Day of November 2018.

**Pamela L. Hinzman
State Hearing Officer**