



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

Bill J. Crouch  
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BOARD OF REVIEW  
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Jolynn Marra  
Interim Inspector General

December 10, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.:18-BOR-2544

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,

Danielle C. Jarrett  
State Hearing Officer  
Member, State Board of Review

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

cc: William Smalley, Department Representative

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

██████████,

**Appellant,**

v.

**Action Number: 18-BOR-2544**

**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 30, 2018, on an appeal filed September 25, 2018.

The matter before the Hearing Officer arises from the September 17, 2018 determination by the Respondent to pend for verification of 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 February 2017 through November 2017.

At the hearing, the Respondent appeared by William Smalley, Child Care Resource and Referral (CCR&R) worker, Department Representative. 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 November 23, 2016
- D-2 Child Care Verification Form, dated November 23, 2016
- D-3 Email Correspondence, dated December 6, 2016
- D-4 Child Care Certificate, dated December 17, 2016
- D-5 Child Care Redetermination Form, dated May 15, 2017
- D-6 Child Care Verification Form
- D-7 Child Care Certificate, dated May 16, 2017
- D-8 Child Care Redetermination Form, dated November 7, 2017
- D-9 Email Correspondence, dated November 15, 2017 and November 16, 2017
- D-10 Child Care Parent Notification Letter, dated November 15, 2017
- D-11 Child Care Parent Notification Letter, dated December 1, 2017
- D-12 Application for Child Care Services, dated August 21, 2018

- D-13 Child Care Parent Notification Letter, dated September 17, 2018  
D-14 Child Care Parent Services Agreement, dated November 23, 2016

**Appellant's Exhibits:**

NONE

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) On August 21, 2018, the Appellant reapplied for child care services. (Exhibit D-12)
- 2) On September 17, 2018, the Respondent issued a notice advising the Appellant that if she did not enter into a repayment agreement in the amount of \$2,700, her case would close, and child care repayments would cease effective September 30, 2018. (Exhibit D-13)
- 3) A second notice was issued on September 17, 2018, which advised the Appellant that she was no longer eligible for child care services because she owed a total repayment of \$2,700. (Exhibit D-13)
- 4) The Appellant executed a Child Care Parent Services Agreement (Agreement) on November 23, 2016. (Exhibit D-14)
- 5) The Appellant was enrolled in the Strategic Planning in Occupational Knowledge for employment and Success (SPOKES) job readiness activity from November 28, 2016 through January 31, 2017.
- 6) The Appellant underwent a status check for redetermination of eligibility in May 2017, and submitted her redetermination form which indicated she was receiving West Virginia Works (WV Works), pregnant, and attending doctor's appointments. (Exhibit D-5)
- 7) The Appellant did not indicate she was going to school or training when she completed her May 2017 eligibility review. (Exhibit D-5)
- 8) On May 16, 2017, the CCR&R worker reissued a Child Care certificate to the Appellant effective June 1, 2017 through November 30, 2017. (Exhibit D-7)
- 9) The CCR&R worker failed to take appropriate action at the time of redetermination by approving her for continued child care services when she reported she was no longer engaged in a qualifying child care activity.

- 10) On November 11, 2017, the Appellant submitted a redetermination of eligibility form indicating she was enrolled in a WV Works activity. She also added a new child, [REDACTED], for child care services. (Exhibit D-8)
- 11) On November 16, 2017, CCR&R worker contacted the DHHR worker who indicated that the Appellant was most likely in a baby barrier and not required to do an activity for the receipt of WV Works. (Exhibit D-9)
- 12) The Appellant attended SPOKES as a qualified activity from November 28, 2016 through January 31, 2017. (Exhibit D-9)

### **APPLICABLE POLICY**

Child Care Subsidy Policy (CCSP) § 2.2.1 explains that during the intake interview, parents will be asked to submit verifications of identity, WV residency, all income, including child support, and WV Works participation of each parent in the home, and the need for child care services.

CCSP § 2.4.3.11 reads that the parent has the responsibility of reporting changes in circumstances within five (5) days. Failure to report changes to the agency may result in case closure, repayment of services, and/or (30) day penalty closure before services can be reopened.

CCSP § 2.3.4.13 states that the parent has the responsibilities to submit changes in circumstances during the status check completed every six (6) months. Status checks verify income and continuing need for services.

CCSP § 3.6.2 indicates that WV Works participants must participate in their qualifying activity at least twenty (20) hours per week. Those recipients who do not meet this requirement are not eligible for child care services.

CCSP § 4.4 explains that status of WV Works parents must be verified by the WV Works worker.

CCSP § 8.1 explains that it is the responsibility of every CCR&R worker and DHHR worker to minimize the opportunity for improper payments by performing his or her duties as outlined in the policy manual. The primary burden for the prevention of misrepresentation rests on the CCR&R case manager. The case manager must make sure that the application, status check form, and supporting verifications have been fully completed, properly signed, dated, and any conflicting or missing information brought to the attention of the client for clarification or completion. Reviewing case record and verification thoroughly prior to issuing a certificate to the client will aid the case manager in reducing errors and preventing misrepresentation. Case managers should also ensure that clients fully understand their rights and responsibilities of the program and understand their respective application and status check forms. The case manager should not hesitate to verify questionable information any time there is doubt about a client's situation.

CCSP § 8.3.1 reads that improper payments due to worker error are defined as payments that

should have been made, or that were made in an incorrect amount due to worker error in determining and verifying eligibility. Incorrect amounts include overpayments, underpayments, and inappropriate denials of payment.

CCSP § 8.3.1.1 states that when a worker fails to verify income, school enrollment, or special needs status it is defined as a worker error.

CCSP § 8.3.1.2 reads that it is the CCR&R's responsibility to collect improper payments when it's a worker error regardless of the amount.

CCSP § 8.3.2.3 explains when a parent uses child care services when the parent has lost a job or quit school or job readiness programs, the case will close, and no further payment is made. The R&R worker should contact the child care provider regarding the agency no longer being responsible for payment, send a closure letter to the parent advising them the status of their case and the need for repayment.

CCSP § 8.3.3 reads that there are times when it is difficult to discern whether an improper payment occurred due to willful misrepresentation or is simply the result of a client's genuine confusion over subsidy program rules and responsibilities. If the case worker believes that overpayment is result of the client's failure to understand, it is a programmatic infraction. It is the CCR&R's responsibility to collect improper payments in this instance, regardless of the amount.

CCSP § 8.6.5 explains that when it comes to WV Works recipients, when repayment arrangements are made, workers should consider the impact of payment schedules and amount on very low-income WV Works clients.

## **DISCUSSION**

On August 21, 2018, the Appellant reapplied for child care services. The Appellant indicated that she was receiving WV Works income and attending a qualifying activity. At that time, the Appellant was denied child care services because it was determined that a repayment was owed for services received from February 5, 2017 through November 30, 2017.

A review of previously issued certificates indicated that two separate errors occurred resulting in over-payment. The Appellant erred by not reporting a change in activity within five (5) days beginning January 31, 2017. The Respondent erred when it approved Appellant's application for child care services in May 2017, when the Respondent failed to act on the Appellant's report she was no longer participating in a child care qualifying activity.

The DHHR worker confirmed that the Appellant was enrolled in SPOKES, a childcare qualifying activity, from November 26, 2016 through January 31, 2017. The DHHR worker also stated that because the Appellant was in a "baby barrier" effective September 28, 2017, she was not required to attend a child care qualifying activity to receive WV Works.

The Appellant argued that she should not be responsible for the repayment because the Respondent had a duty to notify her of the repayment obligation prior to her August 2018 reapplication. The Appellant also contended that she did not know that she was required to report changes in her WV Works activity to a CCR&R worker. The Appellant testified that she had five (5) different DHHR workers from February 2017 to November 2017. The Appellant stated that her last DHHR worker placed her in a medical barrier due to her inability to complete her monthly required hours at SPOKES as a result of doctor's appointments while pregnant with her second child. The Appellant argued that she was never told that child care services would terminate if she was not in a qualifying child care activity. The Appellant also testified that she did not have transportation at the time to pick her child up from school, so she sent her to daycare for a half a day when school was in session and that during the summer break her child attended daycare full time. The Appellant argued that she was required to send her child to daycare in the summer, at least (14) days a month, in order to keep her child care services.

The Respondent testified that per policy, the Appellant had (5) days to report any changes in the status of her activity. The Respondent testified that the Appellant signed the Agreement indicating that she understood her responsibility to report changes for child care services. The Respondent also testified that it is the daycare's policy that the child must be enrolled at least (14) days per month, not child care services policy.

Policy indicates that a repayment is collected, regardless of the amount, when the error is made by either the Appellant or the Department. Although the Appellant's initial error was not intentional misrepresentation and the second error was due to a worker error, policy requires repayment in both instances. Because the Appellant received payments as a result of her failure to report changes in her activity within five (5) days and due to worker error, the Respondent was correct to assess the Appellant with a repayment - policy requires recipients to enter into a repayment agreement to receive continued child care services. The matter of the repayment amount was not considered in this decision. The Appellant is entitled to request a fair hearing on the issue of repayment within the prescribed timeframes if she so desires.

### **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 due to worker error or client error.
- 2) The evidence established that the Appellant was not engaged in a qualifying child care activity from February 5, 2017 through November 30, 2017, as required by policy to receive child care services.
- 3) The evidence proved that child care payments were made on the Appellant's behalf during a period wherein she was ineligible to receive child care services.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate child care services and require the Appellant to enter into a repayment agreement.

**ENTERED this \_\_\_\_\_ day of 2018.**

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**Danielle C. Jarrett**  
**State Hearing Officer**