



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

October 19, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-2178

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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], [REDACTED]

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

██████████,

Appellant,

v.

Action Number: 20-BOR-2178

**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 6, 2020, on an appeal filed September 15, 2020.

The matter before the Hearing Officer arises from the September 4, 2020, decision by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by ██████████, ██████████, ██████████. Appearing as a witness for the Respondent was ██████████, Division of Early Care and Education. 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 Notification Letter Notice of Denial or Closure dated September 4, 2020
- D-2 Hearing Request received September 15, 2020
- D-3 Application for Child Care Services dated April 15, 2020
- D-4 Child Care Parent Services Agreement dated April 15, 2020
- D-5 Copy of West Virginia Driver's License
- D-6 State of ██████████ Birth Certificate
- D-7 New Employment Verification Form dated April 16, 2020
- D-8 Income Calculator Worksheet
- D-9 Email from ██████████ and Division of Early Care and Education dated April 17, 2020

- D-10 Verification of Residency
- D-11 Notification of New Applicant dated April 17, 2020
- D-12 Child Care Certificate dated April 17, 2020
- D-13 Provider Notification Letter – Parent’s Eligibility for Child Care dated April 17, 2020
- D-14 Change of Information Notification dated June 22, 2020
- D-15 Child Care Certificate dated June 22, 2020
- D-16 Provider Notification Letter – Parent’s Eligibility for Child Care dated June 22, 2020
- D-17 Provider Notification Letter – Parent’s Eligibility for Child Care dated September 4, 2020
- D-18 Memorandum from [REDACTED], Child Care Policy Specialist dated September 3, 2020
- D-19 Child Care Policy Instruction Number CC-PI-2020-7 dated September 3, 2020
- D-20 Form ECE-CC-1
- D-21 Child Care Policy Manual Appendix A
- D-22 Child Care Policy Manual §5.0
- D-23 Child Care Policy Instruction Number CC-PI-2020-8 dated September 17, 2020
- D-24 Child Care Notice of Denial or Closure dated September 17, 2020
- D-25 Child Care Parent Services Agreement (unsigned copy)
- D-26 Child Care Certificate dated September 21, 2020
- D-27 Provider Notification Letter – Parent’s Eligibility for Child Care dated September 21, 2020

Appellant’s Exhibits:

- A-1 Child Care Subsidy Policy and Procedures Manual Chapters 4, 5, 6, 8, 12, and 13 (excerpts)
- A-2 Supplemental Child Care Subsidy Policy and Procedures Manual Chapter 1 (excerpt)

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 applied for subsidized Child Care services for her daughter on April 15, 2020 (Exhibit D-3).
- 2) The Appellant submitted a new employment verification form at application verifying her earned income as \$952.40 weekly, or \$4,052.32 monthly (Exhibit D-7).
- 3) The income limit for a two-person assistance group to receive Child Care services is \$2,114.
- 4) Enhanced funding provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act stipulated that income limits could be waived for subsidized Child Care services for essential workers during the healthcare crisis.
- 5) The Appellant met the definition of an essential worker and was not required to meet the income limit to receive subsidized Child Care services.

- 6) Child Care services for the Appellant were approved effective April 15, 2020 (Exhibit D-11 and D-12).
- 7) The Respondent issued a Child Care certificate for the Appellant's daughter, effective April 15, 2020 through March 31, 2021. The Child Care certificate notes that the certificate is subject to change or cancellation upon written notice to the recipient and Child Care provider (Exhibit D-12).
- 8) On September 3, 2020, the Respondent's Division of Early Care and Education notified Child Care Resource and Referral (CCR&R) agencies that the CARES funding allocated to subsidized Child Care services had been exhausted (Exhibit D-19).
- 9) CCR&R agencies notified all essential workers that the CARES funding had been exhausted and that those individuals whose income exceeded the income limits would no longer receive subsidized Child Care services after September 30, 2020.
- 10) The Respondent notified the Appellant on September 4, 2020 that her Child Care services would terminate effective September 30, 2020 (Exhibit D-1).
- 11) The Appellant requested a hearing on September 15, 2020 (Exhibit D-2).
- 12) On September 16, 2020, Governor Jim Justice announced that additional CARES funding had been provided to assist essential workers with subsidized Child Care services through December 31, 2020.
- 13) The Respondent notified the Appellant on September 17, 2020, that her subsidized Child Care services would be extended through December 31, 2020, subject to the availability of funding (Exhibit D-24).
- 14) A new Child Care certificate was issued to the Appellant on September 21, 2020, for October 1 through December 31, 2020 (Exhibit D-26).
- 15) The Appellant elected to continue with the hearing despite the extension of her Child Care certificate.

APPLICABLE POLICY

Child Care Subsidy Policy Manual §3.0 states in order to be eligible for Child Care services, the family must verify the identity of the head of household, meet WV residency requirements, income requirements, and activity requirements. A child must meet age and WV residency requirements, need Child Care for a portion of the day, and reside with the head of household applying for services.

Child Care Subsidy Policy Manual §3.1 states the child must be under age 13 or ages 13 through 17 if the child meets the definition of a special needs child or is under court supervision.

Child Care Subsidy Policy Manual §3.2 states the child must reside or live at the same address, with a family meeting the monthly gross income, by family size, falls within the eligibility guidelines in Appendix A.

Child Care Subsidy Policy Manual §5.0 states to determine the financial eligibility of applicants for or recipients of Child Care, it is necessary to determine:

- The size of the family,
- The amount and source of monthly gross income received by all members of the family and calculate the monthly gross income for the family.
- If the monthly gross income of the applicant's family falls below the maximum allowable income by comparing the family's monthly gross income to the amount listed in the chart contained in Appendix A as appropriate for the family size. Families whose income falls at or below the appropriate level are eligible.
- If the family's assets exceed the asset cap of \$1,000,000. All families, including foster parents Kinship/Relatives, and TANF Caretaker Relatives, who own assets in excess of \$1,000,000 will not be eligible for Child Care assistance.

Child Care Subsidy Policy Manual §6.6 states 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.

Child Care Subsidy Policy Manual Appendix A states entry eligibility for subsidized Child Care services is 150% of the Federal Poverty Level (FPL) and exit eligibility is 185% FPL. The intake income limit for a two-person assistance group is \$2,114 (150% FPL) and exit eligibility for a two-person assistance group is \$2,607 (185% FPL).

The CARES Act, Public Law 116-136, passed on March 27, 2020 provided funding for Child Care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials, without regard to the income eligibility requirements.

DISCUSSION

Pursuant to policy, the income limit to receive subsidized Child Care services must not exceed 185% FPL for the size of the assistance group. The Appellant's gross monthly earned income is \$4,052.32, which exceeds the allowable limit of \$2,607 for a two-person assistance group.

The CARES Act provided federal funding that allowed essential workers to receive subsidized

Child Care services without regard to the income eligibility requirements during the healthcare crisis. The Appellant met the definition of an essential worker, therefore, her application for subsidized Child Care services was approved effective April 15, 2020, despite exceeding the income limits set forth in policy.

On September 3, 2020, it was determined that the CARES Act funding specifically allocated to assist essential workers with subsidized Child Care services had been exhausted. The Respondent's Division of Early Care and Education instructed all Child Care Resource and Referral agencies to inform essential workers exceeding the income limits that their subsidized Child Care services would terminate effective September 30, 2020. Subsequent to the Appellant's September 4, 2020 notice of termination, additional CARES Act funding had been allocated to essential workers to extend subsidized Child Care services through December 31, 2020, pending the availability of funding.

The Appellant did not contest that her income exceeded the income limits to receive subsidized Child Care services. The Appellant contended that when she applied for and was approved for subsidized Child Care services in April 2020, she was not notified that her services could be terminated due to a lack of federal funding. The Appellant argued that her Child Care certificate expired March 31, 2021, and the Respondent should honor this contract until that time.

The Child Care certificate issued to the Appellant upon approval of her application advised that the certificate was subject to change or cancellation upon written notice. The Appellant was notified in writing on September 4, 2020 that her subsidized Child Care services would be terminated. Although the Appellant claimed that she was unaware her eligibility was subject to available funding, the Appellant's monthly gross income exceeds the allowable limit to receive subsidized Child Care services without additional CARES Act funds which enabled essential workers to receive services without regard to the income eligibility requirement.

CONCLUSIONS OF LAW

- 1) The CARES Act signed on March 27, 2020, provided additional federal funding to assist essential workers with the receipt of subsidized Child Care services during the healthcare crisis.
- 2) Applicants meeting the definition of an essential worker were not required to meet income eligibility guidelines to receive subsidized Child Care services.
- 3) The Appellant was approved to receive subsidized Child Care services effective April 15, 2020, as an essential worker, despite exceeding the income limits set forth in policy.
- 4) In September 2020, the CARES Act funds specifically allocated to essential workers exceeding the income limits to receive subsidized Child Care services had been depleted, and the Appellant was notified that her services would terminate.

- 5) Additional CARES Act funding has been provided to essential workers to continue receiving subsidized Child Care services through December 31, 2020, or until the funds are again exhausted.
- 6) The Appellant's eligibility for Child Care services is contingent upon available funding provided by the CARES Act.
- 7) The Respondent's proposal to terminate the Appellant's Child Care services effective December 31, 2020, is affirmed.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to terminate the Appellant's subsidized Child Care services effective December 31, 2020, pending the availability of CARES Act funding.

ENTERED this 19th day of October 2020.

**Kristi Logan
State Hearing Officer**