



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector
General

December 21, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 20-BOR-2416

Dear Mr. [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, MLS
State Hearing Officer
State Board of Review

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

cc: Brittany Lucci, Child Care Resource Center
Kalie Perdue, Child Care Resource Center

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

██████████,

Appellant,

v.

ACTION NO.: 20-BOR-2416

**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 December 2, 2020 on an appeal filed with the Board of Review on October 23, 2020.

The matter before the Hearing Officer arises from the September 28, 2020 determination by the Respondent to deny the Appellant's request for a child care services eligibility policy exception.

At the hearing, the Respondent appeared by Kalie Perdue, Child Care Coordinator —Child Care Resource Center. Appearing as witnesses on behalf of the Respondent were Brittany Lucci, Director —Child Care Resource Center, and Denise Richmond, Child Care Policy Specialist — DHHR 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 DHHR Child Care Certificate, issued July 8, 2020
- D-2 DHHR Child Care Certificate, issued August 24, 2020
- D-3 DHHR Child Care Certificate, issued September 21, 2020
- D-4 DHHR Child Care Parent Services Agreement, received on October 7, 2020
- D-5 Child Care Parent Notification Letter Notice of Denial or Closure, DAY-0179, created on October 23, 2020
- D-6 Child Care Resource Center Policy Exception Request Form, received October 7, 2020
- D-7 Child Care Resource Center Return to Work form, received October 7, 2020

- D-8 Orthopedics Medical Office Building documentation; WVU Medicine documentation; and [REDACTED] letter, received on October 7, 2020
- D-9 DHHR Child Care Parent Notice of Denial or Closure, DAY-0179, created on October 23, 2020
- D-10 DHHR Client Contact Report, dated September 28, 2020
- D-11 West Virginia Child Care Subsidy Policy and Procedures Manual pages
- D-12 WVU Medicine letter, received October 22, 2020
- D-13 Email correspondence, sent October 22, 2020
- D-14 Hearing Request Form, received October 22, 2020

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant was approved for child care services for his minor daughter, [REDACTED], from June 30, 2020 through December 31, 2021 (Exhibits D-1 through D-3).
- 2) At the time of the hearing, child [REDACTED], was one-year old (Exhibit D-1).
- 3) On September 30, 2020, the Appellant was diagnosed with a right ankle sprain and was advised to be non-weightbearing for four weeks (Exhibit D-8).
- 4) On October 23, 2020, the Respondent created a DAY-0179 Child Care Parent Notice of Denial or Closure —dated September 28, 2020— which advised that the purpose of the letter was to notify the Appellant of action taken or information needed regarding the household's child care application (Exhibit D-5).
- 5) The September 28, 2020 dated notice advised that to remain eligible for continuation of childcare services, the Appellant was required to submit, by October 11, 2020, “a medical exception form accompanied by a written and signed medical statement from a licensed physical explaining the nature of the injury, the physical limitations that are the result of the injury, and the anticipated recovery time” and a “leave form stating [the Appellant's] last date of work and his anticipated return date” (Exhibit D-5).
- 6) The September 28, 2020 dated notice advised that October 11, 2020 was the last day the Appellant would be eligible for child care payment (Exhibit D-5).
- 7) On October 7, 2020, the Appellant submitted a Policy Exception Request, medical documentation, and an unsigned Return to Work form which indicated his last date of

employment before leave was September 28, 2020 and his anticipated date of return to employment was unknown (Exhibits D-6 through D-8).

- 8) On October 23, 2020, the Respondent created a DAY-0179 Child Care Parent Notice of Denial or Closure —dated October 13, 2020— which advised that the Appellant was no longer eligible for child care services, effective October 11, 2020, because the Appellant's Policy Exception Request was denied (Exhibit D-9).
- 9) The September 28 and October 13, 2020 dated notices did not contain policy citations supporting the action taken or proposed (Exhibits D-5 and D-9).
- 10) On October 13, 2020, the Respondent closed the Appellant's child care services case (Exhibit D-10).
- 11) On October 22, 2020, the Appellant submitted a letter from his physician which reflected that he is unable to work for four weeks or provide safe child care due to his injury (Exhibit D-12).

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy & Procedures Manual (WVCCSPP) § 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 WV residence requirements, income requirements, and activity requirements.

WVCCSPP § 3.2.3 provides in part:

If both parents, or a parent and a step-parent are in the home, child care services cannot be approved for work or training related needs unless both are participating in a qualifying activity, such as working or attending school/training.

WVCCSPP § 4.0 provides in part:

To be eligible for child care assistance, families must demonstrate a need for care. In general, that means that 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. If there are two parents in the home, both must be involved in a qualifying activity. Qualifying activities are outlined in Sections 4.1 through 4.5.

WVCCSPP §§ 4.7.2, 4.7.2.1.A-4.7.2.1.C, and 4.7.2.2 provides in part:

In certain extraordinary situations, child care may be approved for children under the age of six years in the following circumstances: a family member's release from hospitalization, a recent determination of a temporary or permanent disability of a parent; physician ordered bed rest during pregnancy; and medical treatment for a terminal illness. Exceptions are granted in order to give the family time to prepare and plan for coping with the illness and the effects of treatment and finding alternate child care arrangements/assistance.

An illness exception for hospitalization, surgery, and post hospitalization/surgery recovery (when hospital admissions exceed 48 continuous hours) may be granted for currently active cases when documentation is submitted which includes:

- A discharge plan, diagnosis, treatment plan, and discharge plan; and
- The anticipated length of time for recovery; and
- Documentation related to the parent's illness or the illness of a sibling for which hospitalization was required.

An illness exception for a recent determination of temporary or permanent disability may be granted one time only per child care case, not to exceed six (6) months. Documentation must be submitted which includes:

- An official disability determination by a state or federal agency with a determination date that is within three months of the child care application or redetermination; and
- A treatment plan and the medical statement by a licensed physician which describes how this condition prevents the care of children.

WVCCSPP § 6.1.2.4 provides in part:

If the family is determined to be ineligible at status check, the CCR&R case manager shall issue the DAY-0179 to notify the parent of termination of services and their right to appeal this action.

WVCCSPP § 6.5.2.5 provides in part:

When an illness exception to eligibility policy is denied, the case manager shall notify the parents in writing that the exception was not approved, and the parent is responsible for payment to the provider.

WVCCSPP § 6.6 provides in part:

Any notification of negative action must be in writing on the Parent Notification Letter (DAY-0177 or DAY-0179) 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. Negative

actions affecting the recipients of child care, other than the denial of an application, cannot be taken until 13 calendar days after the client has been notified.

WVCCSPP §§ 11.2-11.2.1.3 provides in part:

Adequate notice of a decision affecting benefits shall be mailed or provided in writing in a fact to face contact. Notices shall be mailed at least thirteen (13) days before the effective date of any action or decision which may be adverse to the client. The notice must include:

- The action or proposed action to be taken
- The reasons for the action provided in terms readily understandable by the applicant
- Citation of relevant policy sections supporting the action or proposed action.

West Virginia Common Chapters (WVCC) § 710.11.A provides:

Adverse Action is defined as a change occurring in a recipient's case that results in a reduction or termination of public assistance.

WVCC § 710.12 provides in part:

In computing any period of time prescribed within this rule, the day of the act from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday in which case the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

WVCC § 710.21 provides in part:

A case under appeal may be remanded for further action if the Hearing Official determines at the hearing that the Respondent failed to adequately evaluate the matter at hand. A case may be reversed and remanded. Any subsequent action resulting from the remand shall be subject to appeal by the Appellant.

DISCUSSION

The Respondent contended that the Appellant was not participating in a qualifying activity and was not eligible to receive a policy exception. The Appellant protested the Respondent's denial of his Policy Exception Request and contended that he should remain eligible for child care pursuant to the documentation provided by his physician. The Appellant did not contest that he was not participating in a qualifying activity. The Respondent had to prove by a preponderance of evidence that the Appellant did not meet the policy requirements to receive an exemption from the participation in a qualifying activity. Further, the Respondent had to prove that the Appellant

received proper advanced notice of adverse action prior to terminating the Appellant's child care services.

ELIGIBILITY FOR POLICY EXEMPTION

To be eligible for an illness policy exemption, the Appellant had to have been discharged from a hospitalization or inpatient/outpatient surgery, had a recent state or federal determination of a temporary or permanent disability, or must be receiving treatment for a terminal illness. The policy requires that eligible circumstances be supported by medical documentation.

The Appellant submitted an Exception Request Form indicating that the Appellant was unable to work or provide child care due to the severity of his work-related injury. While medical documentation was provided which verified the Appellant's ankle injury, history of emergency room and outpatient treatment, and limitations due to his injury, no evidence was entered to establish that the Appellant had been hospitalized or undergone inpatient or outpatient surgery. No evidence was entered to verify that the Appellant was undergoing treatment for a terminal illness or had a recent disability determination by a state or federal agency.

During the hearing, the Appellant argued that he submitted all documents requested by the Respondent's notice. The Respondent argued that a recent hospitalization or state or federal determination of disability was required to grant a policy exception and contended that no documentation was received to support that the Appellant met this exception eligibility criteria. The evidence established that the Appellant submitted the documentation requested by the Policy Exception Request form and the Respondent's notice. The Respondent's argument reflected that specific documentation was required to establish an illness policy exception, however, that documentation was not requested on the Respondent's notices or on the Policy Exception Request form. Although the Respondent's notice was insufficient, the Appellant did not contest the Respondent's assertion that he had not been hospitalized, undergone inpatient or outpatient surgery, or been certified as disabled by a state or federal agency. Because no evidence was entered to establish that the Appellant met an illness policy exception, the Respondent's decision to deny the Appellant's Policy Exception Request was permitted by the policy.

NOTICE

The Respondent's decision to deny the Appellant's Policy Exception Request and decision to terminate the Appellant's child care services are adverse actions, as defined by West Virginia Common Chapters. The Respondent's policy specifies that these adverse actions require issuance of the DAY-0179 form—which shall include the specific negative action, citations of specific policy, a description of the negative action, and be issued to the client thirteen calendar days prior to the effective date of the adverse action. The preponderance of evidence verifies that the Respondent's notices failed to meet these requirements and subsequently prejudiced the Appellant's right to due process because child care services were terminated prior to the issuance of adequate notice of adverse action.

CONCLUSIONS OF LAW

- 1) To be eligible for child care services, both parents in the household must participate in a qualifying activity or be eligible for a policy exemption.
- 2) The Appellant is not participating in a qualifying activity.
- 3) The evidence verified that the Appellant did not meet the eligibility requirements to receive an illness exception.
- 4) The policy requires that the Respondent issue adequate notice thirteen days before the effective date of any action or decision which may be adverse to the Appellant. The notice must include the proposed action to be taken and the citation of relevant policy sections supporting the action taken or proposed action.
- 5) Negative actions affecting the recipients of child care cannot be taken until 13 calendar days after the client has been notified.
- 6) Because the September 28 and October 13, 2020 dates of the Respondent's notices conflicts with the October 23, 2020 created-on date, the dates of the notices are unreliable.
- 7) The September 28 and October 13, 2020 dated notices were created after the October 11, 2020 date of final child care payment.
- 8) The preponderance of evidence failed to establish that Respondent provided adequate advanced notice of adverse action.
- 9) The Respondent incorrectly terminated the Appellant's child care payments, effective October 11, 2020.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's action to terminate the Appellant's child care services, effective October 11, 2020. The matter is **REMANDED** for issuance of adequate advanced notice of adverse action. It is **ORDERED** that any benefits lost, effective October 11, 2020, shall be restored until proper notice is issued. Any further notices are subject to appeal through the Board of Review.

ENTERED this 21st day of December 2020.

Tara B. Thompson, MLS
State Hearing Officer