



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

January 2, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-2743

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 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: 19-BOR-2743

**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 December 10, 2019, on an appeal filed November 20, 2019.

The matter before the Hearing Officer arises from the November 15, 2019, decision by the Respondent to deny the Appellant's application for Child Care services.

At the hearing, the Respondent appeared by ██████████, Supervisor with ██████████. Appearing as a witness for the Respondent was ██████████, Assistant Program Director with ██████████. The Appellant appeared *pro se*. Appearing as witnesses for the Appellant were ██████████, his wife; ██████████, Social Worker with ██████████ and ██████████, Child Protective Service Worker. 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 November 15, 2019
- D-2 Provider Notification Letter – Parent's Eligibility for Child Care dated November 15, 2019
- D-3 Email Correspondence with ██████████ with ██████████, Child Care Specialist, dated November 15, 2019
- D-4 Client Contact Report dated November 15, 2019
- D-5 Notification of New Applicants dated November 14, 2019
- D-6 Provider Notification Letter – Parent's Eligibility for Child Care dated November 14, 2019

- D-7 Application for Child Care Services dated November 14, 2019
- D-8 Child Care Parent Services Agreement dated November 14, 2019
- D-9 Paystub from [REDACTED] dated November 15, 2019
- D-10 Paystub from [REDACTED] dated October 31, 2019
- D-11 Paystub from [REDACTED] dated October 15, 2019
- D-12 Paystub from [REDACTED] dated October 15, 2019
- D-13 Paystub from [REDACTED] dated September 30, 2019
- D-14 State of West Virginia Business Registration Certificate issued September 12, 2019
- D-15 Business Card for [REDACTED]
- D-16 Business Entity Details from West Virginia Secretary of State Website
- D-17 Correspondence from [REDACTED]
- D-18 Self-Employment Ledger
- D-19 Statement of Veterans Affairs Compensation
- D-20 Child Care Subsidy Policy Manual §3.2.6 (effective August 2018)
- D-21 Child Care Subsidy Policy Manual §4.3 (effective August 2018)

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) The Appellant applied for Child Care services for his foster child, Child [REDACTED], on November 14, 2019 (Exhibit D-7).
- 2) The Appellant is a self-employed gunsmith and owns [REDACTED] (Exhibits D-16 and D-17).
- 3) The Appellant’s business is registered with the West Virginia Secretary of State as a Limited Liability Company (Exhibits D-16 and D-17).
- 4) The Respondent issued a notice of denial on November 15, 2019, advising the Appellant that he was ineligible for Child Care services because his business was not a sole proprietorship (Exhibit D-1).

APPLICABLE POLICY

Child Care Subsidy Policy Manual §3.2.5. Foster Parent(s) – Participating in Qualifying Activity: If there are two Foster Parents in the home, both Foster Parents must be participating in a qualifying activity, such as working or attending school/training. For a Foster Parent or Parents

who need child care, services are available, providing that the foster parents do not own assets in excess of \$1,000,000. The children placed in their care must be in the legal custody of the State of West Virginia.

4.0. Need for Child Care: 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.

4.3.5. Types of Self-Employment: 4.3.5.1 Sole Proprietorship: A sole proprietorship is 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.

A. An individual who is the owner of a business type other than a Sole Proprietorship is not eligible for Child Care Subsidy.

B. 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 Child Care Subsidy.

C. An individual participating as a partner of any business is not eligible for Child Care subsidy.

DISCUSSION

Pursuant to policy, foster parents requesting Child Care assistance must demonstrate the need for Child Care by participating in a qualifying activity. The Appellant is a self-employed gunsmith and owner [REDACTED].

The Respondent denied the Appellant's application for Child Care services because his business is a Limited Liability Company, and not a sole proprietorship. The Respondent contended that because the Appellant's business is registered as a Limited Liability Company with the State of West Virginia, he does not meet the requirement of participating in a qualifying activity.

The Appellant testified that he is the sole owner and employee of [REDACTED] and files a personal tax return. The Appellant stated that he did not register his business as a Sole Proprietorship when obtaining his business license to protect his personal assets from possible lawsuits.

Policy defines a sole proprietorship as a business in which the owner has all control and all liability associated with the business operation. The Appellant registered his business as a Limited Liability Company, therefore he does not assume all the liability associated with the business. [REDACTED], the business entity that they Appellant created, is a separate legal entity from the Appellant, and it is the business entity, not the Appellant, that has liability associated with the business. Policy specifically excludes individuals with ownership interests in any business that is not a sole proprietorship as participating in a qualified work activity.

Whereas the Board of Review lacks the authority to change or allow exceptions to policy, the Respondent correctly denied the Appellant's application for Child Care services.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, families requesting Child Care services must demonstrate the need for Child Care by participating in a qualifying work activity.
- 2) The Appellant owns a Limited Liability Company.
- 3) Policy specifically excludes ownership in a Limited Liability Company as a qualifying work activity.
- 4) The Appellant did not meet the requirements as set forth in policy to be eligible for Child Care services.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of the Respondent to deny the Appellant's application for Child Care services.

ENTERED this 2nd day of January 2020.

**Kristi Logan
State Hearing Officer**