



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

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Cabinet Secretary

Board of Review
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Jolynn Marra
Inspector General

April 12, 2022

[REDACTED]
[REDACTED]
[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1252

Dear [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: Kelly Coen, Child Care Resource Center
Brittany Lucci, Child Care Resource Center

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-1252

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on March 15, 2022 on an appeal filed with the Board of Review on February 16, 2022.

The matter before the Hearing Officer arises from the Respondent's February 11, 2022 decision to deny the Appellant eligibility for child care benefits.

At the hearing, the Respondent appeared by Kelly Coen, Child Care Resource Center. Appearing as witnesses on behalf of the Respondent were Brittany Lucci, Child Care Resource Center, and Denise Richmond, Department of Early Care and Education. The Appellant appeared *pro se*. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Notification of New Application
- D-2 Child Care Program Instruction, dated March 25, 2020
- D-3 Memorandum, dated March 30, 2020
- D-4 Office of Child Care- CCDF Frequently Asked Questions Excerpt
- D-5 Email Correspondence Workstation Requirements, dated February 3, 2022
- D-6 ████████ Health Alternative Work Arrangements
- D-7 Email Correspondence
- D-8 Child Care Parent Notification Letter, dated February 11, 2022
- D-9 Child Care Parent Services Agreement

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) On January 31, 2022, the Appellant applied for child care benefits.
- 2) On February 11, 2022, the Respondent issued a notice denying the Appellant's eligibility for child care benefits because, "the verification you submitted as you are working from home, was denied by our Early Care and Education staff. In order to be approved for child care with CCRC, you must be working face-to-face at your place of employment, [REDACTED]" (Exhibit D-8).
- 3) The February 11, 2022 notice did not provide any citations of policy on which the denial was based (Exhibit D-8).
- 4) The Respondent's denial was based on Child Care Program Instructions (Exhibit D-2), a Child Care Resource and Referral Agencies (CCRC) Memorandum (Exhibit D-3), Division of Early Care and Education (DECE) emailed guidance (Exhibit D-7), and federal regulations frequently asked questions guidance (Exhibit D-4).
- 5) On January 31, 2022, the Respondent issued a notice requesting that the Appellant submit documentation of work from home requirements by February 13, 2022 (Exhibit D-1).
- 6) The Appellant is employed in an [REDACTED] Work from Home position for [REDACTED] Health as a Medicare Advocate (Exhibits D-5 and D-6).
- 7) The Appellant is prohibited from performing dependent care during work hours (Exhibit D-5 and D-6).
- 8) The Appellant's workstation is required to comply with Health Insurance Portability and Accountability Act (HIPAA) confidentiality guidelines and must include a secure space for storing and locking confidential information (Exhibit D-5 and D-6).

APPLICABLE POLICY

Child Care Subsidy Policy (CCS) § 4.0 through 4.1 provide in pertinent parts:

To be eligible for child care assistance, families must demonstrate a need for care. In general, that means 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. Income-eligible parents who are working in the private or public sector and who have children who need care are considered to need child care.

CCS Policy §§ 4.1.4 through 4.1.4.2 provide in pertinent part:

Teleworking is defined as work that occurs at home during scheduled business hours rather than commuting to an office or employer location on a daily basis These parents may receive Child Care services provided the employer has approved teleworking. The parent must provide a written statement from the employer indicating the days and hours approved by teleworking or the parent must provide a copy of a telework contract signed by the employer indicating the days and hours telework is approved.

DISCUSSION

The Respondent's representative testified that as of March 2020, child care subsidy recipients who are teleworking are not approved for child care benefits unless they are engaged in telemedicine or telehealth activities. The Respondent's representative argued that without receiving verification that the Appellant is specifically working in telemedicine or telehealth, the Appellant cannot be approved for eligibility.

The Appellant testified that she works for [REDACTED] as a Medicare Advocate, facilitates insurance claims, and accesses patients' insurance benefits. The Appellant argued that information handled is Health Insurance Portability and Accountability Act (HIPAA) protected information. The Appellant testified that her employment is a work from home position and that there is no available facility she could physically work in. The Respondent did not refute the Appellant's position of Medicare Advocate, handling of HIPAA protected information during her work, or that there is no available facility she could physically work in.

To prove that the Respondent correctly denied the Appellant eligibility for child care benefits, the Respondent had to demonstrate by a preponderance of the evidence that the Appellant was ineligible because the policy precluded her from working from home and required her to be working face-to-face at her place of employment.

The Respondent's denial was based on Child Care Program Instructions (Exhibit D-2), a Child Care Resource and Referral Agencies (CCRC) Memorandum (Exhibit D-3), Division of Early Care and Education (DECE) emailed guidance (Exhibit D-7), and federal regulations frequently asked questions guidance (Exhibit D-4). These exhibits reference agency guidance regarding

essential workers, not policy. Further, the February 11, 2022 notice did not include any policy, regulation, or reference to essential worker status as a basis for the Respondent's denial.

The Respondent is required to cite relevant policy and regulation sections in the denial notice. Because the February 11, 2022 denial notice only indicated a requirement for the Appellant to be working face-to-face as a reason for denial of child care benefit eligibility, evidence pertaining to essential worker status was given little weight in the decision of this Hearing Officer. Even if the Respondent had included essential worker status as a basis for denial on the February 11, 2022 notice, the agency instructions, memorandum, and email guidance do not constitute policy or verify a change in child care subsidy policy that precludes the Appellant's eligibility based on work from home employment.

The policy stipulates that child care services may be approved when the employer has approved the Appellant for teleworking or the Appellant has entered into a telework contract with the employer. The Respondent required the Appellant to submit documentation of her employer's work from home requirements. The Appellant submitted the requested documentation. Therefore, the Appellant met her responsibility to submit the requested verification of her work from home arrangement.

The evidence corroborates the Appellant's testimony that her job is a work from home position. Further, the evidence verified that the Appellant is prohibited from performing dependent care while working and is required to comply with HIPAA confidentiality guidelines and maintain a secure space for storing and locking confidential information.

Although the Respondent argued that to be approved for child care benefits, the Appellant must establish that she is working in telehealth or telemedicine activities, no evidence was entered to establish a policy change that narrowed telework eligibility to telehealth or telemedicine employment. The Respondent's action to deny the Appellant child care benefit eligibility based on agency guidance issued beyond the provisions of the written agency policy cannot be affirmed.

CONCLUSIONS OF LAW

- 1) To be eligible for child care services, the parent must be participating in work that prevents the parent from providing care and supervision of the children in the household during the time the parent is working.
- 2) The preponderance of evidence verified that the Appellant is prohibited from performing dependent care while working.
- 3) The Appellant's need for child care is established.
- 4) Child care services may be approved when the employer has approved the parent for teleworking or the parent has entered into a telework agreement with the employer.
- 5) The preponderance of evidence verified that the Appellant's employment is a work from

home position.

- 6) The Respondent incorrectly denied the Appellant's eligibility for child care because the Appellant's employment is a work from home position.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant eligibility for child care services. It is **ORDERED** that the Appellant's child care benefit eligibility be retroactive to the date of application.

ENTERED this ___ day of ___ 2022.

Tara B. Thompson, MLS
State Hearing Officer