



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

May 13, 2022

[REDACTED]
[REDACTED]
[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 22-BOR-1266

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 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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: Teauna Bennett, Assistant Director, Connect Child Care Resource & Referral

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1266

**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 April 21, 2022.

The matter before the Hearing Officer arises from the February 01, 2022 determination by the Respondent to terminate the Appellant's Child Care benefits and establish a repayment claim.

At the hearing, the Respondent appeared by Teana Bennett, Assistant Director, Connect Child Care Resource & Referral (CCR&R). The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

** Observing for the Respondent was Shantae Williams, CCR&R and Jordan Sharp, CCR&R.

Department's Exhibits:

- D-1 Child Care Assistance Status Check Application, dated January 14, 2022; Income Verification for ██████████; CCR&R Income Calculator; Income Verification for ██████████; and ██████████ Bank Account Statement for ██████████
- D-2 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated January 17, 2022
- D-3 Facsimile (Fax) Cover Page from ██████████, dated January 19, 2022; CCR&R Medical Verification Form for ██████████ completed by ██████████ M.D., dated January 18, 2022; Illegible Document for ██████████; and Illegible Physicians Order for ██████████

- D-4 Electronic Mail (E-mail) correspondence, dated January 24, 2022
- D-5 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated February 01, 2022
- D-6 Child Care Subsidy Policy §§ 3.2.2.2 through 3.2.5.1
- D-7 WV DHHR Child Care Parent Services Agreement signed by [REDACTED], dated July 08, 202
- D-8 Fax Cover Page from [REDACTED], dated February 16, 2022; and WV DHHR Child Care Benefit Repayment Agreement signed by [REDACTED], dated February 16, 2022
- D-9 WV DHHR Request for Hearing signed by [REDACTED], dated February 15, 2022
- D-10 Child Care Subsidy Policy Appendix A Sliding Fee Scale for Child Day Care Services

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) 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.
- 2) The Appellant and her spouse, [REDACTED], met the definition of essential workers and were not required to meet an income limit to receive subsidized Child Care services managed by Connect, a Child Care Resource and Referral Agency (CCR&R).
- 3) To be eligible for Child Care Program benefits, both parents in the household must participate in a qualifying activity or be eligible for a policy exception. (Exhibits D-3, D-4, and D-5)
- 4) The Appellant’s spouse, [REDACTED], underwent shoulder arthroscopy surgery on November 04, 2021. (Exhibits D-1 and D-3)
- 5) On an unknown date in January 2022, the Respondent issued a Child Care Parent Notification of Redetermination Letter to the Appellant.
- 6) On January 14, 2022, the Appellant submitted the completed redetermination for Child Care Program benefits to the Respondent via facsimile. At that time, the Appellant included a hand-written declaration noting [REDACTED] was presently receiving short term disability through his employer due to an arthroscopic surgery he underwent on November 04, 2021. (Exhibit D-2)

- 7) On January 14, 2022, the Respondent issued an additional notice requesting further verification of employment status for both [REDACTED], Disability Income Verification, and a completed Medical Verification Form in order for the Appellant to request a medical policy exception for [REDACTED]. The notice indicated that the requested verifications must be received by January 31, 2022, or the Appellant's Child Care Program benefits would be terminated effective that date. (Exhibit D-2)
- 8) On January 19, 2022, the Appellant submitted the requested documentation, including the Medical Verification Form for [REDACTED] completed by his physician. (Exhibit D-3)
- 9) On February 01, 2022, the Respondent issued a notice advising the Appellant she was no longer eligible for child care services due to "[REDACTED] is not participating in an approved activity and your policy exception request was denied." The notice further advised the last date the Appellant would receive child care payment assistance would be January 31, 2022. (Exhibit D-5)
- 10) The Appellant failed to report a change in circumstances regarding [REDACTED] employment status within the five (5) day time frame as established by policy. (Exhibits D-1, D-2, D-3, D-4, D-5, and D-8)
- 11) The Appellant failed to timely submit a request for an medical illness/disability exception to the policy requirement that both parents in the household participate in a qualifying activity in order to maintain continued eligibility for child care services. (Exhibits D-1, D-2, D-3, D-4, D-5, and D-8)
- 12) On July 08, 2020, the Appellant signed a Child Care Parent Services Agreement acknowledging she understood she has a responsibility to notify the CCR&R agency of any change in activity including, but not limited to, a change of employment. (Exhibit D-7)

APPLICABLE POLICY

CARES Act, Public Law 116-136, March 27, 2020 reads, in part:

To provide 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.

West Virginia Child Care Subsidy Policy & Procedures Manual (WVCCSPP) § 2.5.4.11 provides, in part:

Reporting changes in circumstances within five days. Failure to report changes to the agency may result in case closure, repayment of services used for time not approved, and/or 30-day penalty closure before services can be reopened. Income changes during the twelve (12) period will not impact a parent's continuing eligibility for care unless the parent requests a redetermination due to decreases in

income that might result in reduced fees. However, the parent(s) shall report the following changes in circumstances to the provider and to the agency, as appropriate:

C. Changes in employment – place of employment or days and hours worked.

E. Loss of employment or termination from educational or training programs.

WVCCSPP § 3.2.3 provides, in part:

If both parents, or a parent and 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.

WVCCSPP § 4.7.2 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; 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.

WVCCSPP § 4.7.2.1 provides, in part:

For currently active cases, child care may be provided when a family member is hospitalized, requires in or out-patient surgery, and/or released from the hospital. In cases of hospitalization/surgery recovery (for hospital admissions exceeding 48 continuous hours), documentation shall include, but not be limited to:

A. A discharge plan and diagnosis and a treatment plan if one is developed to follow up the discharge plan.

B. The anticipated length of time for recovery.

C. The documentation shall be related to the parent's illness or the illness of a sibling for which hospitalization was required.

D. The approval period is limited to six weeks. If a longer recovery period is indicated by the physician in which minimal care and supervision of a child cannot

be provided, the approval may be for a period not to exceed six months.

E. Post hospitalization/surgery recovery approvals will be considered only for an active child care case and will not be considered for a new application or intake.

WVCCSPP § 6.1.1 provides, in part:

The financial eligibility of each family receiving child care services shall undergo a status check periodically.

WVCCSPP § 6.5.2 provides, in part:

In unusual, extraordinary circumstances, exceptions to eligibility policy can be requested. Exceptions will be granted on an individual basis and only in situations where the circumstances of the client are so different from the norm that the policy is unfair or inappropriate when applied to the individual client. Consideration is given to factors such as the age of the child, the child's ability for self-care, the amount of supervision or hands-on care required for the child, and if there are other household members present who can aid in the supervision of the child. When an exception request is made, CCR&R case managers shall inform parents the approval is not guaranteed. The parent and provider must establish private payment arrangements to ensure that the provider is paid during the time the exception request is reviewed.

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 § 6.7.2 provides, in part:

CCR&Rs shall cooperate with one another and share information, including payment forms, sign in and out sheets, documents, and records in order to reduce and/or prevent improper payments, when information is requested by other CCR&Rs for this purpose. CCR&Rs shall respond to these requests for information in a timely fashion, within five (5) days, unless extenuating circumstances exist.

(WVSCCAP) § 5.1.1 provides, in part:

The continued eligibility of each family receiving Supplemental Child Care Assistance services shall undergo a status check periodically, normally completed before the end of the eligibility period for each program.

WVSCCAP § 8.3.2.3 provides, in part:

When a parent continues to use child care services when the need no longer exists (e.g., parent has lost job or quit school, non-working/non-school attending biological parent has moved into the home), the case will be closed, and no further payment made. As soon as the CCR&R case manager is aware that the client is using services when the need no longer exists, the case manager should:

- A. Immediately call the child care provider and tell them that effective the next business day, the agency will no longer be responsible for payment.
- B. Send an immediate closure notice to the parent, advising them of the status of their case and the need for repayment.
- C. The Recipient shall repay to the agency any child care monies paid on their behalf during the period of ineligibility.

DISCUSSION

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 COVID-19 healthcare crisis. The Appellant and her spouse, [REDACTED] met the definition of essential workers, therefore, the application for subsidized Child Care services was approved despite exceeding the income limits set forth in policy.

The Respondent testified that in January 2022, a Notification of Redetermination for Child Care Program benefits was issued to the Appellant. On January 14, 2022, the Appellant submitted the completed packet to the Respondent noting the Appellant's spouse, [REDACTED], underwent shoulder arthroscopy surgery on November 04, 2021 and was currently utilizing short term disability benefits. Subsequent to the Appellant's submission, the Respondent issued an additional notice requesting further verification of employment status for both [REDACTED], Disability Income Verification, and a completed CCR&R Medical Verification Form for the Request of Policy Exception for [REDACTED]. The notice indicated that the requested verifications must be received by January 31, 2022, or the Appellant's Child Care Program benefits would be terminated effective that date.

On January 19, 2022, the Appellant submitted the requested documentation, including the CCR&R Medical Verification Form for [REDACTED] completed by his physician. The medical verification indicated that due to "shoulder arthroscopy completed November 04, 2021, physical therapy 2-3x a week for 4-6 weeks beginning December 02, 2021" [REDACTED] would be "unable to lift, carry, push or pull anything with right arm." The verification further indicated that if the exception is

not granted “his [REDACTED] condition could be exacerbated if he has to use his right arm.” The Respondent testified that because [REDACTED] medical exception was not granted, and because he was not participating in a qualifying essential worker activity, on February 01, 2022, a Notification of Denial or Closure letter was issued advising the Appellant that effective January 31, 2022, she was no longer eligible for Child Care Program benefits. The Appellant disputed the Respondent’s decision to terminate her Child Care Program benefits and reasoned that due to [REDACTED] health condition, an exception should be granted. The Respondent bears the burden of proof and had to prove by a preponderance of evidence that the Appellant was ineligible for an medical related exception from the policy requirement that both parents participate in qualifying activities in order to be eligible for Child Care Program benefits.

The Appellant testified that due to [REDACTED] requiring a shoulder surgery on November 04, 2021, and because he was required to wear a sling and attend physical therapy until January 31, 2022, he was unable to perform his work duties at full capacity and was placed on short term disability. The Appellant testified that because of these circumstances, [REDACTED] was unable to independently care for their child. The Respondent testified that there was no notification of [REDACTED] medical request until January 14, 2022, when the Appellant submitted the Redetermination for Child Care Program benefits. She further testified that once the Appellant’s husband stopped working, they became ineligible for essential worker Child Care Program benefits. The Respondent attested that because [REDACTED] no longer met the policy requirement that both parents must be participating in a qualifying activity in order to qualify for essential worker Child Care Program benefits, the Respondent automatically assessed the household for income based Child Care Program benefits; however, the household income exceeded the limit established by policy. Additionally, the Respondent testified that because the Appellant failed to report the change of status within five (5) days as stipulated by policy, a repayment agreement for child care services used during the period of ineligibility (November 2021 through January 2022) was required. The Respondent further testified that if the Appellant had timely reported the change in circumstances, her case would have been closed and a repayment of child care benefits would not have resulted. The Appellant did not contest the repayment amount determined by the CCR&R, or that her income surpassed the eligibility limit for subsidized Child Care Program services. She did however, argue that due to her unfamiliarity with Child Care Program benefits, and because her husband’s surgery was scheduled expeditiously (within a week), she failed to report the change in circumstances.

Policy stipulates that a change in circumstances, such as a change of employment or the loss of employment, is to be reported within five (5) days. A failure to report these changes to the agency may result in case closure, repayment of services used for time not approved, and/or a 30-day penalty closure before services can be reopened. Policy further specifies that the continued eligibility of each family receiving Supplemental Child Care Assistance services shall undergo a status check periodically in order to assess the continued need for services. 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.

In extraordinary circumstances, requests for an illness or disability related exception from the policy requirement that both parents participate in qualifying activities may be granted. These exceptions are granted on an individual basis and only in situations where the circumstances of the

client are so different from the norm that the policy is unfair or inappropriate when applied to the individual client. Policy exceptions shall be reviewed by the CCR&R supervisor for approval and then forwarded to the Division of Early Care and Education. For currently active cases, child care may be approved for children under the age of six (6) in the following circumstances: when a family member is hospitalized, requires in or out-patient surgery, and/or released from the hospital. In cases of hospitalization/surgery recovery the approval period is limited to six weeks. If a longer recovery period is indicated by the physician in which minimal care and supervision of a child cannot be provided, the approval may be for a period not to exceed six months. Policy exceptions are granted in order to give the family time to prepare and plan for finding alternate child care arrangements/assistance.

While [REDACTED] November 04, 2021 disability *may* have qualified as a medically related exception from the policy requirement that both parents participate in a qualifying activity, the Appellant's failure to report a change in circumstances to the agency until January 14, 2022, resulted in a termination of benefits and a denial to the requested policy exception. Additionally, because the Appellant failed to report a change in circumstance within the five (5) day time-frame established by policy, the Appellant and her spouse are subject to repayment for Child Care Program benefits received during the period of ineligibility.

CONCLUSIONS OF LAW

- 1) 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 COVID-19 healthcare crisis.
- 2) The Appellant and her spouse were approved to receive subsidized Child Care Program benefits as essential workers, despite exceeding the income limits set forth in policy.
- 3) Pursuant to policy, both parents in the household must participate in a qualifying activity or be eligible for a policy exemption to be eligible for subsidized Child Care Program benefits.
- 4) Because the Appellant failed to report a change in circumstance within the five (5) day time-frame established by policy, the Appellant did not meet the requirement for a one time, six (6) week policy exception.
- 5) The Respondent's action to terminate the Appellant's Child Care Program benefits due to failure to participate in a qualifying activity was correct.
- 6) Because the policy requires a repayment of benefits received in error due to ineligibility, the Appellant is subject to repayment of Child Care Program benefits.

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 May 2022.

Angela D. Signore
State Hearing Officer