



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 27, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1375

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-1375

**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 April 13, 2022 on an appeal filed with the Board of Review on March 10, 2022.

The matter before the Hearing Officer arises from the Respondent's February 28, March 7, and March 8, 2022 decisions to deny the Appellant eligibility for child care benefits.

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

Department's Exhibits:

- D-1 Application for Child Care Services, received February 24, 2022
Notice of Denial, dated February 28, 2022
- D-2 Application for Child Care Services, received March 1, 2022
Notice of Denial, dated March 7, 2022
- D-3 Application for Child Care Services, received March 3, 2022
Notice of Denial, dated March 9, 2022
- D-4 ██████████ Pay Statements
- D-5 Appendix A, Child Care Policy
- D-6 Academic Enrollment Verification
- D-7 ██████████ Invoice

- D-8 Lease Agreement, received February 24, 2022
[REDACTED] Utility Board Statements
- D-9 Email Correspondence, dated March 9, 2022
- D-10 Email Correspondence, dated March 10, 2022
- D-11 Child Care Program Instructions
- D-12 State of West Virginia Executive Order No. 9-20
- D-13 Child Care Policy Excerpts §§ 3.1-3.6.5, 4.0-4.1.3, 4.3-4.3.6.5, and 5.13-5.1.8

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 is married to [REDACTED] (hereafter, [REDACTED]) (Exhibits D-1 through D-3).
- 2) The Appellant is the head of household.
- 3) On February 24 and March 3, 2022, the Appellant applied for child care services eligibility and affixed typed signatures acknowledging the information provided was true and complete (Exhibits D-1 and D-3).
- 4) On March 1, 2022, [REDACTED] applied as a member of the Appellant's household for child care services eligibility and affixed a written signature acknowledging the information provided was true and complete (Exhibit D-2).
- 5) On the March 1, 2022 application, [REDACTED] provided [REDACTED] as his address (Exhibit D-2).
- 6) On the March 3, 2022 application, the Appellant did not list [REDACTED] as a member of the household (Exhibit D-3)
- 7) The applications' instructions stipulated that to receive child care assistance, applicants must be a resident of the state of West Virginia and provide proof of identity and residency (Exhibits D-1 through D-3).
- 8) The Appellant and [REDACTED] are the leased tenants of [REDACTED], beginning on May 1, 2021 and ending on April 30, 2022 (Exhibit D-8).
- 9) The [REDACTED] account for [REDACTED] is listed in [REDACTED] name (Exhibit D-8).

- 10) [REDACTED] is enrolled in the Associate of Science program at the [REDACTED] and attends online-only classes (Exhibit D-6).
- 11) [REDACTED] is self-employed at [REDACTED] (Exhibit D-7).
- 12) [REDACTED] works less than 20 hour per week (Exhibits D-1, D-2, and D-7).
- 13) The Appellant's income exceeded child care services eligibility guidelines for a four-person household (Exhibits D-1 through D-3, and D-5).
- 14) On February 28, 2022, the Respondent issued a notice advising the Appellant was ineligible for child care services because [REDACTED] was enrolled in web-based/online courses (Exhibit D-1).
- 15) On March 7, 2022, the Respondent issued a notice advising the Appellant was ineligible for child care services because [REDACTED] was not meeting child care policy for self-employment because he must have a West Virginia Business license and the business must be a sole proprietorship (Exhibit D-2).
- 16) On March 8, 2022, the Respondent issued a notice advising the Appellant was ineligible for child care services because [REDACTED] was required to be included on the application and be participating in a qualifying activity (Exhibit D-3).

APPLICABLE POLICY

45 CFR §§ 98.20(a)(3)(i) provides in pertinent parts:

To be eligible for child care services, a child shall, at the time of determination, reside with a parent or parents who are working or attending a job program or educational program.

Child Care Subsidy Policy (CCS) §§ 3.0, 3.2.1, 3.2.3, 3.4.1, and 3.4.2 provide in pertinent part:

The family must verify the identity of the head of household, meet the WV residency requirements, income requirements, and activity requirements. The child must reside or live at the same address, with a family who meets monthly gross income criteria.

Child care applicants must be a resident of the State of West Virginia. Proof of residency is required and must show the client's current physical address. WV utility bills with a service at a WV residence address and residential lease agreements with a WV address are acceptable proof of residency.

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

CCS Policy § 3.6.4.3 provides in pertinent part:

Students enrolled in only web-based courses are not eligible for child care.

CCS Policy §§ 1.1.13 and 1.1.21 provide in pertinent parts:

Family: One or more adults and children, if any, related by blood or law, and residing in the same household.

Household: A household consists of all individuals who live at the same address and share common kitchen facilities.

CCS Policy §§ 3.5.1.1, and 4.3.5.1 through 4.3.6, and 3.6.1 provide in pertinent parts:

Self-employed child care recipients must make at least the current West Virginia minimum wage for each hour of work performed, to be eligible for child care services.

Any recipient of child care assistance who is an employee in the private or public sector must work at least 20 hours per week. If the recipient is not working at least 20 hours per week, the recipient will not be eligible for child care services.

A sole proprietorship is a business run and owned by an individual who has all the profits, losses, control, and liability from business operations. An individual who is the owner of a business type other than a sole proprietorship is not eligible for Child Care Subsidy.

Child care may be approved for parents who are self-employed if, at the time of application, self-employed individuals provide a copy of their current State of West Virginia Business Registration, copy of consultant contract for independent sales, and a copy of any other required trade licenses or certifications.

CCS Policy §§ 5.1.8 provides in pertinent parts:

A family member who is away from the family residence for reasons of employment, education, training, shared custody, or military deployment and who returns regularly, or is expected to return, shall be considered a member of the household.

Example 1: Mr. and Mrs. A reside in Sutton with their two children. Mr. A is employed in New York City and maintains an apartment there but returns home on the average of once a month. Mr. A would be considered a member of the same household as his wife and children and the family would consist of Mr. A, Mrs. A, and the two children.

DISCUSSION

The Appellant submitted applications for child care services eligibility on February 28, March 1, and March 3, 2022 that were subsequently denied because [REDACTED] did not meet the requirements for participating in a qualifying activity. The Appellant did not contest that the household's income exceeded eligibility guidelines and only contested that [REDACTED] failed to meet activity requirements. Although [REDACTED] completed an application for child care services eligibility as a member of the household on March 1, 2022, the Appellant argued that [REDACTED] should not be considered a member of her household for eligibility purposes because he maintains a residence in [REDACTED].

Household Member Composition

Applicants for child care services eligibility must provide proof of WV residency. Residential lease agreements with a WV address and WV utility bills are acceptable proofs of residency. For the purpose of establishing child care services eligibility, the Appellant's household submitted a lease, utility bills, and [REDACTED] self-employment pay stubs that reflected [REDACTED] as the mutual address of the Appellant and [REDACTED] residency in West Virginia was established pursuant to the verification submitted by the Appellant and [REDACTED].

February 28, 2022 Child Care Services Eligibility Denial:

The Respondent had to prove by a preponderance of the evidence that [REDACTED] was ineligible for child care services because he was enrolled only in web-based/online courses. The evidence verified that [REDACTED] was enrolled in only online courses. The Respondent correctly determined the Appellant was ineligible for child care services because he is enrolled in online only courses.

March 7, 2022 Child Care Services Eligibility Denial

The policy provides that self-employed child care recipients must make at least the current WV minimum wage for each hour of work performed, work at least twenty hours per week, provide a copy of their current State of West Virginia Business Registration or consultant contract, and maintain sole proprietorship of their business. The Respondent had to prove by a preponderance of the evidence that [REDACTED] was ineligible for child care services because he did not provide verification of a West Virginia business license, sole proprietorship, or work at least twenty hours per week making at least the current WV minimum wage for each hour of work performed. The applications and pay stubs provided verified that [REDACTED] did not work at least twenty

hours per week making at least the current WV minimum wage for each hour of work performed. While the evidence verified that [REDACTED] has a self-employment address based in West Virginia, no evidence was submitted to verify that [REDACTED] maintains a State of West Virginia Business Registration or consultant contract. As the preponderance of the evidence failed to establish that [REDACTED] met self-employment or minimum work requirements, the Respondent correctly denied the Appellant's eligibility for child care services.

March 8, 2022 Child Care Services Eligibility Denial

The Respondent had to prove by a preponderance of the evidence that [REDACTED] was correctly included in the Appellant's household and required to be actively participating in a qualifying activity or be an essential worker. The Appellant testified that [REDACTED] resides in [REDACTED] for more than six months per year, had no intent to return to West Virginia, and that previously submitted documentation should not be used when determining her March 3, 2022 application for child care eligibility.

The evidence reflected that the Appellant marked she was married on her March 3, 2022 application. On the March 3, 2022 application, information regarding [REDACTED] residence conflicted with information provided on the March 1, 2022 application submitted by [REDACTED]. Because there were only two days between [REDACTED] attestation that he resided in the Appellant's household and the Appellant's reported change of [REDACTED] residence, the Appellant's argument that [REDACTED] resided outside the household for more than six months could not be affirmed. No new information was submitted as verification that [REDACTED] had a change of residence and could not be expected to return to the Appellant's household.

Because no verification was submitted to establish that [REDACTED] residency had changed, the Respondent correctly considered [REDACTED] as a member of the household when determining the Appellant's March 3, 2022 eligibility for child care services. The Respondent correctly considered [REDACTED] as a member of the household on the Appellant's February 24, March 1, and March 3, 2022 applications for child care eligibility. Because [REDACTED] was a member of the Appellant's household, he was required to meet the activity requirements established by policy for child care eligibility.

CONCLUSIONS OF LAW

- 1) Adults and children related by blood or law that reside in the same household are considered a family.
- 2) To be eligible for child care services, a child must reside with a family that meets the West Virginia residency, income, and activity requirements.
- 3) The preponderance of evidence verified that [REDACTED] was a resident of West Virginia at the time of the Appellant's February 24, March 1, and March 3 applications for child care services.

- 4) To be eligible for child care services, both parents in the home are required to be participating in a qualified activity.
- 5) Because [REDACTED] is enrolled in only web-based courses, his academic enrollment is ineligible as a qualified activity.
- 6) Self-employed child care recipients must make at least the current West Virginia minimum wage for each hour of work performed, work at least twenty hours per week, provide a copy of their current State of West Virginia Business Registration or consultant contract, and maintain sole proprietorship of their business.
- 7) The preponderance of evidence verified that [REDACTED] did not meet self-employment requirements.
- 8) A family member who is away from the family residence who returns regularly or is expected to return shall be considered a member of the household.
- 9) Because the preponderance of evidence verified that [REDACTED] attested he was a member of the Appellant's household two days before the Appellant's March 3, 2022 application for child care services, [REDACTED] must be considered as a member of the Appellant's household subject to a qualifying activity requirement for child care services eligibility.
- 10) The Respondent correctly denied the Appellant's eligibility for child care services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to deny the Appellant eligibility for child care services.

ENTERED this 2th day of April 2022.

Tara B. Thompson, MLS
State Hearing Officer