



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

Bill J. Crouch  
Cabinet Secretary

Board of Review  
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Jolynn Marra  
Interim Inspector General

April 28, 2022

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 22-BOR-1387

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-1387**

**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 11, 2022.

The matter before the Hearing Officer arises from the Respondent's March 8, 2022 decision to deny the Appellant's application for child care services.

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

**Department's Exhibits:**

- D-1 Email Correspondence, dated February 17, 2022
- D-2 ██████████ Letter, dated February 28, 2022
- D-3 Child Care Parent Notification Letter Notice Denial or Closure
- D-4 Child Care Policy Excerpts §§ 3.2.2.2-3.2.5.1, 8.2.9-8.3.3.1

**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 applied for eligibility for child care services.
- 2) The Appellant has a joint custody arrangement with an individual who receives child care services for the Appellant's children.
- 3) On March 8, 2022, the Respondent issued a notice advising the Appellant he is ineligible for child care services because he previously used another individual's child care certificate, received free child care assistance when he did not have a subsidy essential case, and was not in a qualifying activity due to working from home (Exhibit D-3).
- 4) The Respondent's denial notice was based on Child Care Subsidy Policy § 3.2.4 (Exhibit D-3).
- 5) The Respondent's denial was based on Child Care Subsidy Policy § 8.1.
- 6) The Respondent's denial was based on the results of an investigation of another individual's child care case that had not been concluded at the time of the March 8, 2022 denial.
- 7) On February 17, 2022, the Respondent received an email from a child care provider indicating the Appellant was angry because child care was not covered "while the parent is working from home" and he would have to pay privately when working from home (Exhibit D-1).
- 8) The Appellant is employed with [REDACTED] as an [REDACTED] [REDACTED] (Exhibit D-2).
- 9) The Appellant's primary work location is [REDACTED] and its associated offsite outpatient clinics (Exhibit D-2).

### **APPLICABLE POLICY**

**45 CFR § 205.10(i)(B) and Child Care Subsidy (CCS) Policy §§ 11.2.1-11.2.1.3 provide in pertinent parts:**

Public Welfare Family Assistance Programs are required to provide adequate written notice which includes a statement of what action the agency intends to take, the reason for the intended agency action in terms readily understandable by the applicant, citations of the specific regulations or policy sections supporting such action, and an explanation of the individual's right to request a state agency hearing.

**CCS Policy § 3.2.4 provides in pertinent part:**

In cases where parents have joint custody or shared custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families. Each parent is responsible for paying the fee on the days the child is in his or her custody.

**CCS Policy §§ 8.1 and 8.3.3 provide in pertinent part:**

It is the responsibility of every Child Care Resource and Referral (CCR&R) employee and every DHHR employee to minimize the opportunity for improper payments by performing his duties as outlined in this Child Care Policy Manual. The primary burden for the prevention of misrepresentation rests on the CCR&R case manager.

The case manager must make sure that the application has been fully completed, properly signed, dated, and any conflicting or missing information brought to the attention of the client for clarification or completion. Reviewing the case record and verifications thoroughly prior to issuing a certificate to the client will aid the case manager in reducing errors and preventing misrepresentation.

Clients can be expected to give information only in relation to their understanding of program requirements .... The case manager should not hesitate to verify questionable or inconsistent information any time there is doubt about a client's situation. The signature page of the child care application and status check gives the case manager the authority to investigate discrepancies and suspicions.

There are times when it is difficult to discern whether an improper payment occurred due to willful misrepresentation or is simply the result of a client's genuine confusion over subsidy program rules and responsibilities. When the case manager believes that improper payment is the result of the client's failure to understand, it is a programmatic infraction.

**CCS Policy § 8.3.2-8.3.2.2 provide in pertinent part:**

Misrepresentation occurs when a specific child care policy section is violated as a result of the information not having been reported by the client or reported falsely. If the CCR&R Agency becomes aware that the client is attempting to or has received service/payments to which he is not entitled, the CCR&R case manager must take corrective action to prevent further payments from occurring. Improper payments made as a result of misrepresentation shall be referred to Investigations and Fraud Management (IFM) when the amount exceeds \$1,000. If the amount does not exceed \$1,000, the CCR&R shall initiate repayment procedures.

A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client knew his statement was false.

Examples of a willfully false statement include the following:

- The client states that he does not receive child support when he really does.
- The child care provider bills for days when the child was not in their care.
- The client states that he is employed when he is not.

Misrepresentation can also consist of the suppression of what is true. For example, the client omits the child's biological father when listing household members on her status check, or the client fails to report bonuses received on the application.

## **DISCUSSION**

The Respondent testified the Appellant's child care services application was denied because he misrepresented information to receive child care benefits for which he was ineligible and because working from home was not a qualified activity. The Appellant contested the Respondent's denial and asserted that he had not intentionally misrepresented information to receive child care benefits.

The Respondent had to prove by a preponderance of the evidence that the Appellant was ineligible for child care services because he previously used another individual's child care certificate, received free child care assistance when he did not have a subsidy essential case, and was not in a qualifying activity because he was working from home at the time of application. No evidence was submitted to establish the date of the Appellant's child care services application

### **Misrepresentation**

The policy provides that misrepresentation includes a willfully false statement deliberately given with the intent that it be accepted as true with the knowledge that it is false or a suppression of what is true. The Respondent had to prove by a preponderance of the evidence that at the time of the Appellant's denial, he had made a willfully false statement or suppressed information to receive child care services.

Although the Respondent failed to include the policy section in the March 8, 2022 denial notice as the policy instructs, the Respondent's witness testified the denial was based on CCS policy § 8.1 that requires the Respondent to maintain program integrity. The Respondent's witness testified that if there is a suspicion of misrepresentation, the Respondent is required to investigate and cannot approve child care services until the investigation is complete. The Respondent's reasoning is not consistent with the denial basis included in the March 8, 2022 notice. The notice reflects the denial basis as the Appellant's use of another individual's child care certificate, not that a suspicion of misrepresentation existed that required investigation to be conducted before the Appellant could be determined eligible.

The Respondent's witness testimony established that the Appellant's March 8, 2022 denial was based on the results of an investigation that determined the Appellant had misrepresented

information to receive child care services for which he was not entitled. The Respondent's witness testified that the investigation results had not been submitted for evidence because the investigation had not been concluded before the Respondent's evidence was submitted on April 6, 2022. Therefore, the preponderance of the evidence verified the investigation had not been concluded at the time of the Appellant's March 8, 2022 denial. The Respondent's action to prematurely deny the Appellant child care services eligibility based on information that had not yet been established as fact was incorrect. To affirm the Respondent's March 8, 2022, the Board of Review can only consider reliable information that was available to the Respondent at the time of the March 8, 2022 denial.

The Respondent's witness testified that the determination of misrepresentation had been based on "things found out," comments made," and the February 17, 2022 email received from the provider. The Respondent offered email correspondence from a provider as evidence to prove the truth of the matter. The Respondent's witness testified that before the February 17, 2022 email was received, the Respondent had no interaction with the Appellant. The Appellant contested the validity of the content of the email. The email indicated that the Appellant was advised he would have to pay for child care privately during times he was working from home. The email did not contain any information to verify that the Appellant had misrepresented information to receive child care services. Further, the email did not establish any facts to establish that the Appellant had received child care services through another individual's certificate during times the children were in his custody. No evidence was entered to provide details of how, when, where, or for how long the Appellant misrepresented information to receive child care through another individual's child care certificate. Without corroborating information to verify the facts of the Appellant's misrepresentation or his alleged use of child care services under another individual's child care certificate, this Hearing Officer cannot affirm that the Appellant had misrepresented information at the time of the March 8, 2022 denial.

The Appellant testified that he contacted the respondent to obtain clarity regarding the Respondent's private pay policies. The Appellant did not contest that the Appellant's children received child care services through another case; however, the preponderance of evidence failed to prove that child care was provided for the children during times when the children were in the custody of the Appellant. A general joint custody arrangement and inquiry regarding the Respondent's private pay policies do not establish the details required to establish willful misrepresentation.

The Respondent's witness testified that since the investigation has been concluded, the Appellant may re-apply for child care services.

#### Qualifying Activity

The policy stipulates that 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. The Respondent had to prove by a preponderance of the evidence that the Appellant was not involved in a qualifying activity that prevented the Appellant from providing care and supervision of the children in the household during the time the Appellant was participating in the activity. No evidence was presented by either party to contest that the Appellant was income-eligible, the Respondent only asserted that the Appellant was ineligible because he was not participating in a qualifying activity.

The Respondent's witness testified that the Appellant had told her he was working from home. The Appellant testified that he contacted the Respondent to determine the parameters of submitting private pay for child care and had contacted his employer to determine if he was permitted to provide care to his children during times he was working from home. Evidence submitted reflected that before the Respondent's March 8, 2022 denial, the Appellant had submitted an employer letter establishing that his primary work location was facility-based. The Appellant's application was not submitted as evidence for review. No evidence was entered to establish the date of the Appellant's application and the evidence verified the Appellant was working outside of the home at the time of the Respondent's denial. Therefore, the Respondent's denial of the Appellant child care services eligibility on the basis of the Appellant working from home could not be affirmed.

### **CONCLUSIONS OF LAW**

- 1) Parents who have joint custody or shared custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families.
- 2) Misrepresentation includes a willfully false statement deliberately given with the intent that it be accepted as true with the knowledge that it is false or a suppression of what is true.
- 3) The preponderance of evidence failed to verify that at the time of the Respondent's March 8, 2022 denial the Appellant had misrepresented information to obtain child care services through another individual's child care certificate.
- 4) 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.
- 5) At the time of the Respondent's March 8, 2022 child care services eligibility denial, the Appellant's employment constituted a qualifying activity.

**DECISION**

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

ENTERED this 28<sup>th</sup> day of April 2022.

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**Tara B. Thompson, MLS**  
State Hearing Officer