



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
P.O. Box 1736
Romney, WV 26757
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Jolynn Marra
Inspector General

April 13, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1394

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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Kelly Coen, WVDHHR

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

██████████,

Appellant,

v.

Action Number: 22-BOR-1394

**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 March 31, 2022, on an appeal from March 15, 2022.

The matter before the Hearing Officer arises from the March 1, 2022 decision by the Respondent to deny the Appellant's application for child care subsidy assistance.

At the hearing, the Respondent appeared by Kelly Coen, Supervisor, Child Care Resource Center. Appearing as a witness for the Respondent was Denise Richmond, Child Care Policy Specialist, Division of Early Care and Education. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Pay verification dated January 28, 2022 and February 11, 2022
- D-2 Pay verification for February 11, 2022 and February 25, 2022
- D-3 Income Calculator
- D-4 Sliding Fee Scale for Child Day Care Services
- D-5 ██████████ Spring 2022 Schedule
- D-6 Email Correspondence dated February 23, 2022
- D-7 Child Care Program Instruction CC-PI-2020-4 Temporary Covid-19 Response: Essential Workers
- D-8 State of West Virginia Executive Order No. 9-20

- D-9 Office of Child Care-CCDF regulation, *ww.acf.gov/occ*, last retrieved March 31, 2022
- D-10 Notice of Decision dated March 1, 2022
- D-11 Child Care Subsidy Policy § 2.4.3.1
- D-12 Child Care Subsidy Policy § 3.0

Appellant’s Exhibits:

- A-1 Advisory Memorandum on Ensuring Essential Critical Infrastructure Worker’s Ability to Work during the Covid-19 Response
- A-2 Email Correspondence from Diana Gillispie dated February 8, 2022
- A-3 Catholic Charities of West Virginia Covid-19 Resources, www.cccwv.org, last retrieved March 16, 2022
- A-4 Letter from [REDACTED] dated August 1, 2021

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 and her husband applied for child care subsidy assistance for a household of five individuals.
- 2) The Respondent determined that the Appellant’s household income exceeded the allowable amount for child care subsidy assistance. (Exhibit D-1 through Exhibit D-4)
- 3) The Respondent evaluated the Appellant’s eligibility for child care subsidy assistance under the State of West Virginia, Executive Order No. 9-20, for essential workers.
- 4) The Appellant’s husband, [REDACTED], “hereinafter [REDACTED]”, is enrolled as a [REDACTED] Student at [REDACTED], “hereinafter [REDACTED]”, for nine (9) credit hours for 2022 Spring semester and employed as a [REDACTED] Teaching Assistant through an assistantship with the same university. (Exhibits D-5 and A-4)
- 5) On March 1, 2022, the Respondent determined that [REDACTED] was not considered an essential worker based on his “primary activity is being a student”. (Exhibit D-6)
- 6) On March 1, 2022, the Respondent issued a denial notice to the Appellant informing her that the child care subsidy application had been denied due to excessive income. (Exhibit D-10)

APPLICABLE POLICY

Child Care Subsidy Policy and Procedures Manual § 3.0 documents in pertinent part:

In order to be eligible for child care services the family must verify the identity of the head of household, meet WV residency requirements, income requirements, and activity requirements. A child must meet age and WV residency requirements and need childcare for a portion of the day.

Child Care Subsidy Policy and Procedures Manual § 5.0 document in pertinent part:

To determine the financial eligibility of applicants for or recipients of childcare, it is necessary to determine:

- A: The size of the family.
- B. The amount and source of monthly gross income received by all members of the family and calculate the monthly gross income for the family.
- C. If the monthly gross income of the applicant's family falls below the maximum allowable income by comparing the family's monthly gross income to the amount listed in the chart contained in Appendix A as appropriate for the family size. Families whose income falls at or below the appropriate level are eligible.
- D. If the family's assets exceed the asset cap of \$1,000,000. All families, including foster parents Kinship/Relatives, and TANF Caretaker Relatives, who own assets in excess of \$1,000,000 will not be eligible for childcare assistance. Assets include checking and savings accounts, retirement accounts, stocks, bonds and other financial instruments, trust funds, burial plots, vehicles, real estate and other property, personal collections, livestock, business equipment and property, and jewelry.
- E. The CCR&R case manager shall use the following general procedures and guidelines to calculate family size, verify monthly gross income, and determine types of income to count or exclude to establish eligibility for childcare. See Appendix A for income eligibility guidelines.

State of West Virginia Executive Order No. 9-20 documents in pertinent part:

“Essential Business and Operations” includes those industries and workers described in the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency's March 19, 2020, Memorandum on Identification

of Essential Critical Infrastructure Workers During COVID-19 Response and its “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response” attached thereto (the “CISA Guidance”). IN addition to those industries and workers identified in the CISA Guidance, the following industries, businesses, and/or workers employed in such industries and business are specifically included as Essential Business and Operations under this Order:

o. Education Institutions: Education institutions including public and private pre-K-12 schools, colleges and universities for purposes of facilitating distance learning, performing critical research, or performing essential functions including providing for the delivery or pick-up of food for school age children; provided that proper social distancing of six feet between persons is maintained to the greatest extent possible.

DISCUSSION

The Appellant applied and was subsequently denied eligibility for assistance under the child care subsidy program due to excessive income. The policy which governs payment of a child care subsidy dictates that eligible families are approved when their monthly gross income is below the maximum allowable amount for the family size. The Appellant offered no contention that her household’s monthly gross income exceeded the allowable amounts set forth by policy. In response to the coronavirus pandemic, the Department of Early Care and Education waived household income eligibility guidelines for those applicants who were engaged in essential work. (Exhibit D-7 and Exhibit D-9) The Respondent evaluated the Appellant’s household for child care subsidy assistance under the essential worker provision. Under this provision, the Respondent determined that because [REDACTED] was considered a full-time college student, he was not engaged in essential work. Thus, the Appellant’s application was denied. The Respondent failed to notify the Appellant of the denial of child care subsidy assistance based on her spouse not meeting the essential worker provisions and only provided notice of the denial based on excessive income. The Respondent must prove by a preponderance of the evidence that the Appellant’s spouse was not engaged in essential work as defined by the Executive Order citation.

[REDACTED] is employed as a Graduate Teaching Assistant through an assistantship with [REDACTED]. He receives financial support and a tuition waiver from the university in exchange for twenty (20) hours per week in assisting with instruction of university courses with the remaining portion of his workweek devoted to dissertation research. (Exhibit D-5). [REDACTED] receives a bi-weekly pay from the university and has a Federal Employee Identification Number, “hereinafter FEIN”. (Exhibit D-2). Additionally, [REDACTED] employment through his assistantship was subject to a background check and unsatisfactory results would terminate his employment. (Exhibit A-4)

On March 24, 2020, the Governor of West Virginia implemented Executive Order No. 9-20, Stay At-Home Order, in response to the coronavirus (COVID-19) pandemic. The order temporarily ceased operations of non-essential business in the state and outlined multiple businesses and professions which were considered “Essential Business and Operations” in accordance with the U.S. Department of Homeland Security and Infrastructure Security Agency (CISA). (Exhibit D-8). On March 25, 2020, the Early Care and Education Division of the West Virginia Department of Health and Human Resources, established that any individual who met the definition of an essential worker, by providing verification they were a member of the essential work force, would qualify for child care assistance. (Exhibit D-7). The Executive Order defines multiple occupations, including educational institutions, which were established as essential professions. The Executive Order documents that “educational institutions including public and private pre-K-12 schools, colleges and universities for purposes of facilitating distance learning, performing critical research, or performing essential functions were deemed essential. (Exhibit D-8). In conjunction with the Executive Order, the Respondent’s own internal memorandum identifies educators as an essential worker. (Exhibit D-7).

The Respondent opined that [REDACTED] was not engaged in essential work as defined by the Executive Order and the internal memorandum. Denise Richmond, Child Care Program Specialist testified that [REDACTED] was considered a full-time student and not deemed an essential worker. The Respondent testified that the household would be eligible for child care subsidy assistance if they meet the income guidelines established for their household size. (Exhibit D-6)

The Appellant contends that her household is eligible for child care subsidy assistance because both she and her husband are essential workers. Specifically, the Appellant notes that her husband is an employee of [REDACTED], receives a biweekly pay, and has a FEIN listed on his pay verification. (Exhibit D-2). The Appellant provided documentation from [REDACTED] (Exhibit A-4) which documents her husband’s [REDACTED] Teaching position and salary with the [REDACTED] [REDACTED] employment began on August 18, 2021 and ends June 20, 2022. The letter documents that [REDACTED] is required to maintain federal documentation verifying a [REDACTED] identity and eligibility to work in the United States. (Exhibit A-4).

While many employees and businesses have returned to work, the Respondent relied upon executive orders and memorandum to determine the criteria for the Appellant’s eligibility under the essential worker income waiver. (Exhibit A-2) These orders and internal memorandum clearly identify educational employees, along with workers who provide services to support educators, as essential workers. The guidelines under which the Respondent determined the Appellant’s eligibility do not differentiate as to whether an employee must be in “full time” status or “part-time” status to be deemed an essential worker. During the eligibility determination process, the Appellant provided information which documented her spouse’s schedule and employment functions to assist in instructing courses at [REDACTED] for twenty (20) hours per week. The documentation in which the Respondent relied upon in the decision-making process clearly establishes that [REDACTED] was employed in the educational field, an essential infrastructure as listed by the guidelines. Because the Appellant’s spouse was employed as an

educator, the Respondent's decision to deny the Appellant's eligibility for a child care subsidy assistance cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Guidelines for child care subsidy assistance establish that income eligibility requirements are waived for essential worker applicants.
- 2) The Appellant spouse's employment at an educational institution is deemed essential by the guidelines.
- 3) The Respondent's decision to deny the Appellant's application for child care subsidy assistance cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant's eligibility under the essential worker provision established in Executive Order No. 9-20 for child care subsidy assistance. It is hereby **ORDERED** that the Appellant's child care benefit eligibility be retroactive to the date of application.

ENTERED this _____ day of April 2022.

Eric L. Phillips
State Hearing Officer