



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County DHHR
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Inspector General

May 4, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1395

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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: Jennifer Stewart, MountainHeart Child Care Resource and Referral

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

████████████████████,

Appellant,

v.

Action Number: 22-BOR-1395

**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 19, 2022, on an appeal filed March 15, 2022.

The matter before the Hearing Officer arises from the March 1, 2022, decision by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by Jennifer Stewart, Case Manager with MountainHeart Child Care Resource and Referral. Appearing as witnesses for the Respondent were Donna England, Supervisor with MountainHeart and Denise Richmond with the 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 Status Review Form (ECE-CC-1E) received February 14, 2022
- D-2 Paystubs dated January 28 and February 11, 2022 from ██████████
- D-3 Child Support Verification Form received February 14, 2022
- D-4 U.S. Immigration Services Form I-797C received February 14, 2022
- D-5 Marriage Certificate from ██████████
- D-6 Email from Jennifer Stewart to Susan McCoy dated February 15, 2022
- D-7 Email from Denise Richmond to Susan McCoy and Jennifer Stewart dated February 15, 2022

- D-8 Child Care Subsidy Policy §5.1.8
- D-9 Email from Denise Richmond to Susan McCoy and Jennifer Stewart dated February 15, 2022
- D-10 Child Care Parent Notification Letter Notice of Denial or Closure (DAY-0179) dated March 1, 2022
- D-11 Child Care Parent Services Agreement (DAY-0162) dated March 25, 2021
- D-12 Child Care Parent Services Agreement signed July 22, 2015
- D-13 Hearing Request Form received March 4, 2022
- D-14 Email from Client Services to Jennifer Stewart and Email from Donna England to Denise Richmond dated March 4, 2022
- D-15 Email from Donna England to Board of Review dated March 15, 2022
- D-16 Code of Federal Regulations – 45 CFR §§98.2, 98.20, 98.21, 98.16 and Child Care State Plan (excerpt)

Appellant’s Exhibits:

- A-1 Employer Statement for [REDACTED] dated April 11, 2022

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 was a recipient of subsidized Child Care services for her son.
- 2) The Appellant married [REDACTED] on July 22, 2021, in [REDACTED] (Exhibit D-5).
- 3) The Appellant applied for her husband’s entry into the country with the U.S. Immigration Services in July 2021 (Exhibit D-4).
- 4) The Appellant submitted a Status Review Form to the Respondent’s Child Care Resource and Referral (CCR&R) agency on February 14, 2022 (Exhibit D-1).
- 5) The Appellant reported her marriage on the Status Review Form.
- 6) The Appellant’s case manager received clarification from the Respondent’s Division of Early Care and Education that the [REDACTED] was considered a household member and was required to be added to the Appellant’s case (Exhibits D-6 and D-7).
- 7) The Respondent issued a notice of closure to the Appellant on March 1, 2022, advising that the last date of payment for Child Care services would be January 31, 2022, due to her failure to report a change in marital status within five (5) days and a failure of her spouse to be in an approved activity (Exhibit D-10).

- 8) The Respondent did not request verification that [REDACTED] was participating in a qualifying activity.

APPLICABLE POLICY

Child Care Subsidy Policy 1.1. Definition of Program Terms

The following definitions of program terms shall be used in interpreting Child Care program policy:

1.1.13 defines *family* as one or more adults and children, if any, related by blood or law, and residing in the same household. Where adults other than spouses reside together, each shall be considered a separate family. Emancipated minors and children living under the care of individuals not legally responsible for their care shall be considered as separate families.

1.1.21 states a *household* consists of all individuals who live at the same address and share common kitchen facilities.

2.4.2. CCR&R Supplied Forms

2.4.2.2. Child Care Parent Services Agreement (DAY-0162): The case manager should discuss the terms of the Child Care Parent Services Agreement (DAY-0162), which includes information about the parent's rights and responsibilities to maintain their eligibility and to the provider, as well as rules on using care appropriately to prevent improper payments. The parent and CCR&R case manager shall sign the agreement, and a copy shall be given to the parent for their records.

2.5.4. Parent Responsibilities

2.5.4.11. 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:

- A. Changes in identifying information – household members, address, telephone numbers, etc.
- B. Changes in family size affecting eligibility–
 - 1. Additions to household size: child, spouse, biological parent of children in the home.
 - 2. Subtractions to household size: child, spouse, or biological parent of children.
- C. Changes in employment – place of employment or days and hours worked.
- D. Changes in provider.
- E. Loss of employment or termination from educational or training programs.
- F. Need for job search time. Job search time must be requested and approved by the agency.
- G. When entering changes of circumstances to the FACTS record, a new assessment is done only when changes are made to number of people in the family or income amounts that result in a reduction of fees. Recipients must verify income amounts. A new assessment changes the status check tickler to twelve (12) months from the date of the new assessment.

3.0. Family Eligibility

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, need Child Care for a portion of the day, and reside with the head of household applying for services.

3.2.3. Two Parent Households

If both parents, or a parent and stepparent 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.

4.0. Need for Child Care

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. It is possible for a parent to meet all other eligibility requirements, but not demonstrate a need for care. For example, if the household consists of a single father and his two school age children, and he only participates in his qualifying activity during the times the children are in school, the family does not demonstrate a need for care. Child Care recipients who do not use Child Care assistance for an extended period no longer demonstrate an established need for Child Care assistance and therefore may not remain an active case.

5.1.8. Family Members Expected to Return

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 as a member of the household.

6.1.2.4. Status Check – Family Found Ineligible

If the family is determined to be ineligible at status check, the CCR&R case manager shall issue the DAY-0179, Child Care Parent Notification of Denial or Closure, to notify the parent of termination of services and their right to appeal this action. The CCR&R case manager shall issue the DAY-0613 to notify the provider that the family is no longer eligible for Child Care services. If the family returns the status check after the 15th day, and is found ineligible, the case manager shall issue a DAY-0179 informing the client that they are ineligible and that the previous closure notice for failure to return the review by the 15th day of the month remains in effect.

6.1.2.5. Status Check – Case Closures

The case managers should request the case for closure no later than noon on the first working day of the month. The supervisor should have all cases approved for closure by the end of the day on the first working day of the month.

6.2.2. Adding a Spouse or Biological Parent

To add a spouse or biological parent to the household in the middle of an assessment period the case manager shall:

6.2.1.4. Send a Child Care Parent Closure Notice (DAY-0179) to the client requesting new income, employment and/or school verifications to be returned within 13 days for the spouse/biological parent added to the home.

6.2.1.5. Include on the DAY-0179 that the Child Care case will close within 13 days if the spouse/biological parent is not participating in an approved activity, and/or if new income verification received shows that the family is ineligible for services.

11.2. Adequate and Timely Notice of Decisions.

Adequate notice of a decision affecting benefits shall be mailed or provided in writing in a face-to-face contact, to the applicant. Notice shall be mailed at least thirteen (13) days before the effective date of any action or decision which may be adverse to the applicant.

11.2.1. Required Notice Information.

The notice must include the following information:

11.2.1.1. The action or proposed action to be taken.

11.2.1.2. The reasons for the action provided in terms readily understandable by the applicant.

11.2.1.3. Citation of relevant policy sections supporting the action taken or proposed.

11.2.2. Exceptions to Thirteen (13) Day Notice.

There are certain exceptions to the 13-day notice.

11.2.2.1. When a mass change is initiated, i.e., changes in provider reimbursement levels or income eligibility levels, a 13-day notice is not necessary.

11.2.2.2. When the fee is increased as a result of redetermination. A fee increase is not considered a negative action. The client's status has changed based upon his or her increase in income, but the benefit of Child Care is not being eliminated. If clients return their status check after the due date but before the closure date, the case manager is to process the review. (See section 6.1.2) The case manager will not be able to give 13 days' notice regarding the increased fee. However, the CCR&R case manager must inform the provider and client of the date the fee increase takes place.

11.2.2.3. When there is a safety concern. In certain situations, such as allegations of serious child abuse or massive structural damage to the Child Care home, immediate closure may be necessary to protect the health and safety of the children.

DISCUSSION

Pursuant to policy, a family must demonstrate a need for care to be eligible for Child Care assistance. In general, that means that the head of household must be involved in a qualifying activity that prevents the parent from providing for the 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.

The Appellant reported that she was married in July 2021 on her February 2022 status check review form. The Respondent determined that the Appellant was no longer eligible for Child Care services because she failed to report the marriage within five days and because her spouse was not participating in a qualifying activity. The Respondent contended that the Appellant's husband is considered a member of her household because he is expected to join the household.

The Appellant argued that her husband resides in [REDACTED], where they were married, and although she has applied for approval for his entry into the U.S., this approval has not been granted. The Appellant testified that her husband has never resided in her household, has never been to the U.S. and he does not support her financially. The Appellant testified that her husband is attending school and working part-time and provided a statement from his employer in [REDACTED] verifying that he has been employed since July 2018 (Exhibit A-1).

The Appellant testified that she forgot that she was required to report changes within five days and that she did not intentionally withhold her marriage from the Respondent. The Appellant pointed out that she reported the marriage at her status review although she admits that she did not report it timely.

The Respondent provided a copy of the Parent Services Agreement the Appellant signed in 2015 when she initially applied for Child Care services. In signing the Parent Services Agreement, the Appellant agreed to report a change in marital status and a change in the number of people in her household within five days. The Respondent provided a Parent Services Agreement from March 2021, that only contained the CCR&R worker's signature (Exhibits D-11 and D-12). There was no evidence or testimony from the Respondent that the Appellant had reviewed the Parent Responsibilities since 2015. Furthermore, policy requires changes in household size that affect eligibility be reported within five days but does not specifically require the that a recipient report a change in marital status.

Policy states a family consists of one or more adults and children related by blood or law, who reside in the same household. A household consists of all individuals who live at the same address and share common kitchen facilities. The Appellant's family and her household, by these policy definitions, consists of herself and her son. The Appellant's husband does not reside in her household or share her address and cannot be considered a member of her family or a member of her household.

Policy stipulates that 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 as a member of the household. The Respondent contended that [REDACTED] was expected to join the Appellant's household and once they were married, they became a family. Under this policy, the Respondent argued that [REDACTED] is required to be added to the Appellant's household. [REDACTED] has never resided in the Appellant's household and has never resided in the U.S. His absence from the home cannot be attributed to employment and although the Appellant is hopeful of his entry into the U.S., his immigration status is pending, and he cannot be considered as expected to return under this policy.

Based upon Child Care subsidy policy and the information provided, the Appellant's husband cannot be considered a member of her household. [REDACTED] has never resided with the Appellant, his entry into this country cannot be reasonably expected, and he does not contribute to her financially. The Respondent's termination of the Appellant's Child Care services for her husband's failure to participate in an activity cannot be affirmed. The Appellant admittedly did not follow Child Care procedure in failing to report her marriage timely. However, as her husband is

not a member of her household, her change in marital status has no effect on her eligibility for Child Care services.

CONCLUSIONS OF LAW

- 1) Policy defines a family as one or more adults and children, related by blood or law, and residing in the same household.
- 2) Policy defines a household as all individuals who live at the same address and share common kitchen facilities.
- 3) The Appellant's husband does not reside in her household and does not reside in this country.
- 4) The Appellant's husband cannot be considered a member of her family or a member of her household.
- 5) Policy states that a parent who is away from the family residence for employment who returns regularly or is expected to return, is considered a member of the household.
- 6) The absence of the Appellant's husband from the residence cannot be attributed to employment, and his immigration status cannot be reasonably expected to be approved.
- 7) The Respondent incorrectly added the Appellant's husband to her household.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to terminate the Appellant's Child Care services.

ENTERED this 4th day of May 2022.

Kristi Logan
Certified State Hearing Officer