



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
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Jolynn Marra
Inspector General

May 24, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1484

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: Kimberly Perrine, BFA, [REDACTED] DHHR

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

██████████,

Appellant,

v.

ACTION NO.: 22-BOR-1484

**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 May 4, 2022, on an appeal filed April 5, 2022.

The matter before the Hearing Officer arises from the Respondent's March 9, 2022 decision to deny the Appellant's application for Child Care subsidy benefits.

At the hearing the Respondent appeared by Kimberly Perrine. Appearing as a witness for the Respondent was Diana Gillispie, Child Care Family Policy Specialist. The Appellant appeared *pro se*. Appearing as a witness for the Appellant was ██████████, Director, ██████████. The witnesses were placed under oath and the following documents were admitted into evidence:

Department's Exhibits:

- D-1 Child Care Parent Notification Letter Notice of Denial or Closure
- D-2 Notification of New Applicants, dated March 4, 2022

Appellant's Exhibits:

- A-1 Letter from ██████████ Ph.D., ██████████
- A-2 Copy of West Virginia Legislature 2021 Regular Session Introduced House Bill 3212

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 applied for Child Care subsidy benefits on February 18, 2022.
- 2) The Appellant's household includes herself, her husband, and their child.
- 3) On March 9, 2022, the Respondent sent the Appellant notice that her application had been denied because her husband's income exceeded child care eligibility guidelines (Exhibit D-1).
- 4) The Appellant's husband works at [REDACTED] as a pastor with a gross monthly income of \$3,307.69. (Exhibits A-1 and D-1).
- 5) The Appellant works at [REDACTED] as a Media and Communications Director. (Exhibit A-1)
- 6) [REDACTED] meets the definition of Essential Businesses and Operations as defined by West Virginia Executive Order 9-20.
- 7) The Appellant and her husband are Essential Employees of [REDACTED].

APPLICABLE POLICY

American Rescue Plan Act of 2021 (Public Law 117-2-Mar. 11, 2021), §2201(a), in pertinent part, explains Child Care and Development Block Grant Funding: Payments made to states from funds made available under this subsection shall be obligated in fiscal year 2021 or the succeeding 2 fiscal years. States are authorized to use such funds to provide child care assistance to workers deemed essential during the response to coronavirus by public health officials, without regard to the income eligibility requirements.

U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency's August 10, 2021 Advisory Memorandum on Ensuring Essential Critical Infrastructure Workers' Ability to Work During COVID-19 Response and the August 5, 2021 Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 4.1 attachment (CISA Guidance) identifies as essential workers clergy and other essential support for houses of worship.

All individuals within the State of West Virginia are under a general stay at home order and are directed to stay at home or their place of residence unless performing an essential activity. An activity is essential if the purpose of the activity is going to and from an individual's place of worship. (State of West Virginia Executive Order No. 9-20 (March 20, 2020), §1(f))

Essential Businesses and Operations should continue to operate and shall remain open, and individuals may leave their residence to provide any services or to perform any work necessary to

offer, provision, supply, operate, maintain, and/or repair Essential Businesses and Operations. The term “Essential Businesses and Operations” includes those industries and workers described in 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 businesses are specifically included as Essential Businesses and Operations under EO 9-20. Religious entities – religious facilities, entities, and groups and religious gatherings, including weddings and funerals are included under EO 9-20. (State of West Virginia Executive Order No. 9-20 (March 20, 2020), §3(n))

DISCUSSION

In February 2022, the Appellant applied for Child Care subsidy benefits for her household of three. Both she and her husband are employed by [REDACTED]. On March 9, 2022, the Respondent denied the Appellant’s application based on the Appellant’s husband’s gross monthly income exceeding Child Care eligibility guidelines. The Appellant appealed the Respondent’s decision asserting that both she and her husband qualify as Essential Workers under the American Rescue Plan Act of 2021 (hereinafter referred to as “ARP Act”). Therefore, the Child Care subsidy income eligibility requirements should not be applied to her household.

Pursuant to policies established under the ARP Act, household income eligibility requirements for Child Care subsidy benefits were waived if the employee was engaged in essential work during the COVID-19 declared emergency response. This policy was still in effect at the time of the Appellant’s application. Thus, the determinative issue is whether the Appellant and her husband were considered Essential Workers by policy thereby eliminating income eligibility requirements for Child Care subsidy benefits.

In March 2020, the Governor of West Virginia issued Executive Order 9-20 (EO 9-20) declaring a State of Emergency ordering the public to stay at home. However, EO 9-20 recognized certain businesses were essential and needed to remain operational. Accordingly, EO 9-20 included the CISA guidance regarding industries and workers considered to be Essential Businesses and Operations. EO 9-20 specifically identified houses of worship and religious entities as Essential Businesses and Operations. Those individuals employed by these identified Essential Businesses and Operations were identified as Essential Workers.

The testimony and evidence showed that the Appellant’s husband worked as a pastor for [REDACTED], which by definition is an Essential Business and Operation. As a pastor, then, the Appellant’s husband would be considered an Essential Worker.

The Appellant also works at [REDACTED]. The Appellant is the Media and Communications Director. As such, the Appellant’s duties include oversight for the church’s information technology and telecommunications activities. The evidence showed that the Appellant’s role as the Media and Communications Director is crucial in supporting the essential functions of the church especially with remotely held services. As the reliance on technology increased during the COVID-19 emergency, the proper functioning of technology was (and still remains) critical to the operations of Essential Businesses. Because [REDACTED]

Church is considered to be an Essential Business, the Appellant whose job it is to ensure that the church continues its operation, meets the definition of an Essential Worker.

Both the Appellant and her husband are considered to be Essential Workers under EO 9-20. Because the ARP Act which eliminated the income eligibility requirements during the declared COVID-19 emergency is still in effect, the Respondent should not have applied the income limits in considering the Appellant's application. Therefore, the Respondent's decision to deny the Appellant's application for Child Care subsidy benefits cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Respondent is authorized to use Child Care and Development Block Grant Funding to provide child care assistance to workers deemed essential during the response to coronavirus by public health officials, without regard to the income eligibility requirements.
- 2) The preponderance of evidence verified that the Appellant and her husband were Essential Workers at the time of the Respondent's Child Care subsidy benefit denial.
- 3) The Respondent incorrectly denied the Appellant eligibility for Child Care subsidy benefits.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant eligibility for Child Care subsidy benefits. It is hereby **ORDERED** that the Appellant's Child Care subsidy benefit eligibility be retroactive to the date of application.

ENTERED this 24th day of May 2022

Lori Woodward, Certified State Hearing Officer