



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
1027 N. Randolph Ave.
Elkins, WV 26241

Jolynn Marra
Inspector General

September 22, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1992

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,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

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

Cc Kimberly Perrine, MountainHeart Child Care R&R

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

████████████████████,

Appellant,

v.

Action Number: 22-BOR-1992

**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 September 13, 2022, on an appeal filed August 16, 2022.

The matter before the Hearing Officer arises from the July 5, 2022, decision by the Respondent to deny the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by Kimberly Perrine, Subsidy and Resource Coordinator, MountainHeart Child Care Resource and Referral. Appearing as a witness for the Respondent was Denise Richmond, Child Care Policy Specialist, Division of Early Care and Education, WVDHHR. The Appellant appeared *pro se*. All witnesses were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 CCDF Frequently Asked Questions in Response to COVID-19 (www.acf.hhs.gov)
- D-2 Child Care Parent Notification Letter of Denial dated July 5, 2022
- D-3 Fair Hearing Request signed on August 11, 2022

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant applied for subsidized Child Care benefits on June 21, 2022.
- 2) The Appellant is a kinship relative Foster Care provider for her grandchildren, ages one and three.
- 3) The Appellant is considered an “essential employee” for purposes of COVID-19 pandemic procedures.
- 4) On July 5, 2022, the Appellant was notified that her Child Care application was denied (Exhibit D-2).
- 5) The Appellant’s Child Care application was denied because she was teleworking (Exhibit D-2).
- 6) The Appellant requested a fair hearing concerning the application denial on August 16, 2022 (Exhibit D-3).

APPLICABLE POLICY

The WVDHHR Child Care Assistance Policy and Procedure Manual states:

Section 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.

Section 4.1.4, Teleworking:

Teleworking is defined as work that occurs at home during scheduled business hours rather than commuting to an office or employer location on a daily basis. The employer has approved a work area in the home that is free of interruptions and contains the necessary equipment needed to perform assigned tasks. Teleworking is intended to be used as a self-employment location. These parents may receive Child Care services provided the employer has approved the parent for teleworking or the parent has entered into a telework contract with the employer.

4.1.4.1. The parent must provide a written statement from the employer indicating the days and hours approved by teleworking. OR

4.1.4.2. The parent must provide a copy of a telework contract signed by the employer indicating the days and hours telework is approved.

DISCUSSION

To be eligible for Child Care benefits, 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. Teleworking is defined as work that occurs at home during scheduled business hours rather than commuting to an office or employer location on a daily basis. These parents may receive Child Care services provided the employer has approved the parent for teleworking or the parent has entered into a telework contract with the employer.

Kimberly Perrine, Subsidy and Resource Coordinator with MountainHeart Child Care Resource and Referral, testified that the Appellant is ineligible for Child Care benefits because essential employees are prohibited from teleworking due to changes in Child Care subsidy policy that occurred as a result of the COVID-19 public health emergency. Ms. Perrine explained that Child Care policy shifted from traditional guidelines to critical care guidelines when the COVID-19 regulations were set forth in March 2020 and the agency received funding from the CARES Act and American Rescue Plan. Ms. Perrine stated that the new guidelines prohibit teleworking (with exceptions for telehealth workers). Ms. Perrine testified that Child Care benefits for teleworkers will be permitted when critical care guidelines are no longer in effect. She stated that the Appellant was informed that she could explore the potential of court-ordered Child Care for her grandchildren.

The Appellant testified that she works for an oil and gas company, and her duties include reviewing leases, contacting landowners, and attending frequent web-based work meetings. The Appellant explained that her grandchildren are one and three years old, and that she cannot work while providing care for the children. The Appellant testified that she has had to utilize 79 vacation hours and 35 family care hours while she has had the children because she cannot work when they are present. She stated that she has spent \$3,000 for Child Care services since June. She indicated that she contacted the children's case worker about the possibility of court-ordered Child Care, but no action was taken because she was in hearing status for the application denial.

Pursuant to the Respondent's current Child Care policy, telework is an allowable work activity.

During the hearing, the only evidentiary policy provided by the Respondent was a frequently asked questions response from the U.S. Department of Health and Human Services website concerning the protective services category for "vulnerable children" in 45 Code of Federal Regulations 98.20 (a)(3)(ii). The information states that the protective services population for Child Care purposes "may include children of health care and emergency workers, and other workers deemed essential by public officials" as a "temporary, short-term measure." The information goes on to state that "those essential workers cannot work from home, and many of the regular child care arrangements for these children have closed. In addition, many of these individuals are working extended or irregular hours, and under stressful circumstances. As a result, the children of these workers are

vulnerable during this time. To ease service delivery to these children, Lead Agencies may choose to classify them as in need of protective services for purposes of child care subsidy eligibility. Children do not need to be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category.’

The information provided as evidence by the Respondent only serves to temporarily extend the definition of “vulnerable children” to include children of health care and emergency workers as a result of the pandemic. The fact sheet states that **these essential workers (health care workers)** cannot physically do their jobs from home due to the nature of their work and that their regular Child Care arrangements may be closed. The Hearing Officer in no way interprets this section to mean that teleworking for **all** essential workers is disallowed.

Therefore, the Appellant’s June 2022 Child Care application should have been evaluated in accordance with existing teleworking policy. This denial with no policy basis is particularly concerning in light of the Appellant’s willingness to serve as a Foster Care provider for her two grandchildren.

The decision of the Respondent to deny the Appellant’s Child Care services cannot be affirmed as the evidence provided by the Respondent fails to negate existing Child Care policy regarding telework.

CONCLUSIONS OF LAW

- 1) Current Child Care policy allows individuals to receive Child Care benefits while teleworking provided that all other requirements are met.
- 2) The Appellant should have been evaluated for Child Care benefits as a teleworker in June 2022.
- 3) The Respondent’s decision to deny the Appellant’s Child Care benefits cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the decision of the Respondent to deny the Appellant’s Child Care benefits. The case is hereby **REMANDED** to the Respondent to evaluate the Appellant’s eligibility for Child Care services in accordance with existing policy set forth in the Child Care Policy Manual. If the Appellant is determined eligible for Child Care benefits, the Respondent must restore any lost benefits to the Appellant retroactive to the date of denial.

ENTERED this 22nd day of September 2022.

**Pamela L. Hinzman
State Hearing Officer**