



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
4190 Washington Street, West  
Charleston, West Virginia 25313  
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Bill J. Crouch  
Cabinet Secretary

Jolynn Marra  
Inspector General

October 14, 2022

[REDACTED]

Re: [REDACTED] v WV DHHR  
ACTION NO.: 22-BOR-2012

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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: William Smalley, Case Manager, Connect Child Care Resource & Referral

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

██████████,

**Appellant,**

v.

**Action Number: 22-BOR-2012**

**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 07, 2022.

The matter before the Hearing Officer arises from the August 01, 2022 determination by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by William Smalley, Case Manager, Connect Child Care Resource & Referral (CCR&R). The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

\*\* Observing for the Respondent was Miranda Dunlap, CCR&R, Amy Struble, CCR&R, and Jordan Sharp, CCR&R.

**Department's Exhibits:**

- D-1 WV DHHR Child Care Parent Notification of Redetermination Letter, dated June 30, 2022
- D-2 Duplicate copy of WV DHHR Child Care Parent Notification of Redetermination Letter, dated June 30, 2022; WV DHHR Essential Child Care Assistance Status Check, signed July 07, 2022; ██████████ Pay Disbursements for ██████████; and WV DHHR Child Care ECE-CC-1C Self-Employment Ledger Forms for ██████████

- D-3 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated July 19, 2022
- D-4 Child Care Subsidy Policy §§ 4.3.6.2 through 4.3.6.5
- D-5 2021 Individual Federal Income Tax Return for [REDACTED]; and West Virginia Personal Income Tax Return for [REDACTED]; and 2022 Form 1040-ES Payment Vouchers for [REDACTED]
- D-6 State of West Virginia Certificate of Registration of Trade Name for [REDACTED], dated May 26, 2020
- D-7 Child Care Subsidy Policy §§ 1.1.15 through 1.1.24
- D-8 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated August 01, 2022
- D-9 Electronic Mail (E-mail) correspondence, dated August 02 through August 09, 2022
- D-10 E-mail correspondence, dated August 15, 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) Enhanced funding provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act stipulated that income limits could be waived for subsidized Child Care services for essential workers during the healthcare crisis.
- 2) The Appellant and her spouse, [REDACTED], met the definition of essential workers and were not required to meet an income limit to receive subsidized Child Care services managed by Connect, a Child Care Resource and Referral Agency (CCR&R).
- 3) To be eligible for Child Care Program benefits, both parents in the household must participate in a qualifying activity or be eligible for a policy exception. (Exhibits D-3, D-4, and D-5)
- 4) On June 30, 2022, the Respondent issued a Child Care Parent Notification of Redetermination Letter to the Appellant. (Exhibit D-1)
- 5) On July 14, 2022, the Appellant submitted the completed redetermination for Child Care Program benefits to the Respondent. (Exhibit D-2)
- 6) On July 19, 2022, the Respondent issued an additional notice requesting further verification of employment status for both [REDACTED]. The notice indicated that the requested verifications must be received by July 31, 2022, or the Appellant's Child Care Program benefits would be terminated effective that date. (Exhibit D-3)

- 7) On August 01, 2022, the Respondent issued a notice advising the Appellant she was no longer eligible for child care services that read “You failed to complete your childcare review as required.” The notice further advised the last date the Appellant would receive child care payment assistance would be July 31, 2022. (Exhibit D-8)
- 8) Subsequent to the August 01, 2022 notice, the Appellant submitted a copy of her 2021 Federal Income Tax Return to the Respondent. (Exhibit D-5)
- 9) The Appellant and her spouse reported \$149,235 in earned income on their 2021 Federal Income Tax Return. (Exhibit D-5)
- 10) The Appellant earned a total income of \$89,721 through [REDACTED], as reported on her 2021 Federal Income Tax Return. (Exhibit D-5)
- 11) The Appellant’s spouse, [REDACTED], earned a total income of \$59,514 through self-employment, as reported on his 2021 Federal Income Tax Return. (Exhibit D-5)
- 12) Pursuant to policy, the Appellant’s spouse, [REDACTED], has allowable expenses of supplies (\$960), business taxes/license (\$250), utilities (\$2,167), and other (\$782) totaling \$4,159.
- 13) Pursuant to policy, deductions for travel (\$8,896), meals (\$8,100), and mileage (\$42,377) are disallowed expenses.
- 14) After allowable expenses as established by policy, the Appellant’s spouse, [REDACTED], has an income totaling \$55,355, for Child Care purposes.
- 15) The Appellant was denied child care eligibility on the basis that her spouse, [REDACTED], failed to participate in a qualifying activity, and not because she failed to complete her childcare review.

### **APPLICABLE POLICY**

#### **CARES Act, Public Law 116-136, March 27, 2020 reads, in part:**

To provide funding for Child Care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials, without regard to the income eligibility requirements.

#### **West Virginia Child Care Subsidy Policy & Procedures Manual (WVCCSPP) § 2.5.4.11 provides, in part:**

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:

- ...
- C. Changes in employment – place of employment or days and hours worked.
- ...
- E. Loss of employment or termination from educational or training programs.

**WVCCSPP § 3.2.3 provides, in part:**

If both parents, or a parent and step-parent 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.

**WVCCSPP § 4.0 provides, in part:**

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.

**WVCCSPP §§ 4.3 through 4.3.4 provides, in part:**

The following definitions shall apply to child care policies regarding self-employment:

Livelihood: means of support or survival in which an individual engages to meet daily living expenses.

Hobby: an activity done for relaxation, and not for the purpose of meeting the basic daily living expenses of the individual. Activities generating income below the income tax liability limit of \$5000.00 per year shall be considered a hobby.

Self-Employment – Home-based: Self-employment in which the primary function of the business is performed in the home. Examples: a beautician with a salon in the garage, a family auto repair business operated in a building next to the family's residence.

Self-Employment – other: Self-employment in which the primary function of the business is performed at a location other than the family's home. Example: plumber, lawn care business, construction worker, handy man, hairstylist who rents a booth. These individuals may use a portion of their home as a home office to conduct phone business or accounting but cannot claim the home office as an allowable deduction since the primary function of their work occurs elsewhere.

**WVCCSPP § 4.3.6.2 provides, in part:**

Parents must participate in self-employment activity a minimum average of 20 hours per week and show an income of at least minimum wage per hour. If both parents are self-employed, jointly, or separately, the minimum work hour/minimum wage requirement applies to each.

**WVCCSPP § 5.2.2 provides, in part:**

Countable Non-Farm Self-Employment Income. Net income from non-farm self-employment: gross receipts minus allowable expenses. Gross receipts include the value of all goods sold and services rendered.

**WVCCSPP § 5.2.2.2 provides, in part:**

The following expenses are allowable deductions in calculating net income.

- A. Cost of goods purchased.
- B. Rent, heat, light, power on the income producing property.
- C. Cost of Supplies.
- D. Wages and salaries paid to employees other than the business owner/parent of child.
- E. Business taxes and/or licenses.
- F. Advertising goods or services.
- G. Interest (not payments) on the principal of the purchase price of income producing property.
- H. Real estate taxes paid on the income producing property

**WVCCSPP § 5.2.2.2 provides, in part:**

The following expenses are not allowable deductions in calculating net income for purposes of this policy.

- A. Money set aside for pensions and profit-sharing plans.
- B. Federal, State, and local income taxes.
- C. Depreciation and Depletion.
- D. Net losses from previous years.
- E. Mileage Rate on vehicles and other travel costs.
- F. Premiums paid for health/medical insurance.
- G. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery, and other durable goods.
- H. Entertainment and meals.
- I. Personal expenses paid out of business accounts (personal car payments, utility bills, personal primary residence mortgage/rental payments, clothing, vacation expenses, etc.) Small businesses may provide in-kind compensation to owners in the form of payment of personal bills and expenses directly from business accounts. This is treated as countable income, as it is part of the client's compensation.
- J. If the family uses its residence in a self-employment enterprise, the utility costs, rent or interest on the mortgage of the residence will not be allowed unless

they can be shown as separate from the household's normal usage

**WVCCSPP § 5.4 provides, in part:**

The methods acceptable for verifying most eligibility criteria:

The working applicant/recipient must receive a non-subsidized wage or salary, either from an employer or through self-employment, to meet the definition of working (see Chapter 1, Definition of Program Terms). In situations where a non-working applicant/recipient (attends school or training) has no income from any source, the client's statement to this fact will be accepted unless the CCR&R case manager has reason to believe the statement is not truthful. All documentation must be no older than 45 days except for the exceptions listed for child support, alimony, and tax records. Tax records must reflect the most recent period.

Item to Be Verified	Method of Verification
INCOME a. wages b. salary c. incentive payments d. bonuses	1 months' worth of Check stubs ECE-CC-1B until the first regular pay period; then must verify through check stub. Tax records
Profit from self-employment	Income tax records ECE-CC-1C Client business records

**WVCCSPP § 6.6 provides, in part:**

Any notification of negative action must be in writing on the Parent Notification Letter (DAY-0177 or DAY-0179). The form letter shall include the specific negative action, with citation of specific policy and a description of any action, if applicable, on behalf of the client that resulted in the negative action. Negative actions affecting the recipients of child care, other than the denial of an application, cannot be taken until 13 calendar days after the client has been notified.

**WVCCSPP §§ 11.2 through 11.2.1.3 provides, in part:**

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.

The notice must include the following information:

- The action or proposed action to be taken.
- The reasons for the action provided in terms readily understandable by the applicant.

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

**West Virginia Supplemental Child Care Assistance Policy & Procedures Manual (WVSCCAP) § 5.1.1 provides, in part:**

The continued eligibility of each family receiving Supplemental Child Care Assistance services shall undergo a status check periodically, normally completed before the end of the eligibility period for each program.

**DISCUSSION**

The CARES Act provided federal funding that allowed essential workers to receive subsidized Child Care services without regard to the income eligibility requirements during the COVID-19 healthcare crisis. The Appellant and her spouse, [REDACTED] (hereafter, [REDACTED] met the definition of essential workers, therefore, the application for subsidized Child Care services was approved despite exceeding the income limits set forth in policy.

On June 30, 2022, a Notification of Redetermination for Child Care Program benefits was issued to the Appellant. The Appellant submitted the completed redetermination to the Respondent on July 14, 2022. On July 19, 2022, the Respondent issued an additional notice requesting further verification of the employment status for [REDACTED]. The notice indicated that the requested verifications must be received by July 31, 2022, or the Appellant's Child Care Program benefits would be terminated effective that date. On or before August 01, 2022, the Appellant submitted a copy of her 2021 Tax Return and [REDACTED] business registration to the Department. The Respondent testified that because [REDACTED] income (loss) totaled -\$4,018, policy defines it as a "hobby," and not a qualifying activity for child care eligibility purposes.

On August 01, 2022, the Appellant's child care eligibility was terminated effective July 31, 2022, on the basis that [REDACTED] failed to participate in a qualifying activity. It should be noted that the August 01, 2022 Notice of Decision lists a failure to complete the child care review as the basis for termination. To prove that the Respondent correctly terminated the Appellant's eligibility for child care benefits, the Respondent had to demonstrate by a preponderance of the evidence that the Appellant's spouse generated income below the tax liability limit of \$5,000 per year, resulting in a failure to participate in a qualified activity as defined by policy.

Subsequent to the August 01, 2022 notice, the Department contacted the Appellant via electronic mail (hereafter, e-mail) to request an itemized list of expenses for [REDACTED] business as listed on the 2021 Federal Income Tax Return Schedule C, in order to be reconsidered for childcare eligibility. The Appellant refused to provide the statement arguing that because the Internal Revenue Service (IRS) did not require an itemized statement for 2021 Federal Income Tax Return purposes, Connect Child Care should not require it for child care eligibility determinations. The Appellant argued that because [REDACTED] business was eligible for a mileage deduction of \$42,377, the business operated with a net loss for 2021 Federal Tax Return purposes. She further argued that because mileage is considered a disallowed deduction for child care eligibility purposes, [REDACTED] business income exceeds the \$5,000 income threshold required by policy to establish child care eligibility.



When reviewing the evidence, the Appellant and ██████ reported a total earned income of \$149,235 on their 2021 Federal Income Tax Return. The Appellant earned a total income of \$89,721 through ██████; and her spouse, ██████, earned a total income of \$59,514 through self-employment. Pursuant to childcare policy, the Appellant's spouse has allowable expenses totaling \$4,159. Deductions for travel (\$8,896), meals (\$8,100), and mileage (\$42,377) are disallowed expenses as established by the policy. After all *allowable* [emphasis added] expenses/deductions are applied, the Appellant's spouse has an income totaling \$55,355, for child care eligibility purposes. Additionally, because mileage is considered a disallowed expense, the requirement of an itemized statement for a deduction that would not be considered is unwarranted.

Further, the Respondent's decision to close the Appellant's child care case is an adverse action, as defined by West Virginia Common Chapters. The Respondent's policy specifies that adverse actions require issuance of the DAY-0179 form which must include the proposed action to be taken, *the reason for the action provided in terms readily understandable by the applicant* [emphasis added], and the citation of relevant policy sections supporting the adverse action. The evidence verified that the Respondent's notice failed to meet these requirements and subsequently prejudiced the Appellant's right to due process because child care services were terminated prior to the issuance of adequate notice of adverse action.

The Respondent testified that the language in the August 2022 termination notice is considered a "general catch all letter." He further explained that because ██████ was not participating in a qualifying activity, a need for child care services was not established. He further testified that procedurally, when a need for child care cannot be established, the Department considers it a "failure to complete the review." However, the Respondent did not introduce any regulation that stipulated a notice of adverse action may be issued beyond the procedures permitted in policy.

### CONCLUSIONS OF LAW

- 1) The CARES Act provided federal funding that allowed essential workers to receive subsidized Child Care services without regard to the income eligibility requirements during the COVID-19 healthcare crisis.
- 2) The Appellant and her spouse were approved to receive subsidized Child Care Program benefits as essential workers, despite exceeding the income limits set forth in policy.
- 3) Pursuant to policy, both parents in the household must participate in a qualifying activity or be eligible for a policy exemption to be eligible for subsidized Child Care Program benefits.
- 4) The Appellant and her spouse, ██████, both earn incomes that exceed the \$5,000 income threshold required by the policy to be eligible for subsidized Child Care Program benefits.
- 5) The Respondent's action to terminate the Appellant's Child Care Program benefits due to a failure to participate in a qualifying activity was incorrect.

**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 termination, July 31, 2022.

ENTERED this \_\_\_\_\_ day of October 2022.

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**Angela D. Signore**  
State Hearing Officer