



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Bill J. Crouch
Cabinet Secretary

Sheila Lee
Interim Inspector General

December 09, 2022

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 22-BOR-2228

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: Recourse to Hearing Decision
Form IG-BR-29

cc: William Smalley, Case Manager, Connect Child Care Resource & Referral
[REDACTED] Appellant Representative

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

██████████,

Appellant,

v.

Action Number: 22-BOR-2228

**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 November 16, 2022, on an appeal filed October 18, 2022.

The matter before the Hearing Officer arises from the October 03, 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). Appearing on behalf of the Appellant was her spouse, ██████████. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia Department of Health and Human Resources (WV DHHR) Request for Fair Hearing, dated October 11, 2022
- D-2 Copy of ██████████ Paycheck for ██████████, dated June 10, 2022; Copy of ██████████ Paycheck for ██████████, dated June 24, 2022; Copy of ██████████ Paycheck for ██████████, dated June 10, 2022; and Copy of ██████████ Paycheck for ██████████, dated June 24, 2022
- D-3 Child Care Subsidy Policy Appendix A - Sliding Fee Scale
- D-4 Electronic Mail (E-mail) correspondence, dated September 06, 2022
- D-5 WV DHHR Child Care Parent Notification of Closure Letter, dated October 03, 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) On an unknown date, in July 2022, the Appellant submitted a completed redetermination for continued eligibility of subsidized child care program benefits for essential workers.
- 4) At the time of the July 2022 review, the Appellant's gross monthly income was determined to be \$8,928.46. (Exhibit D-2)
- 5) On September 15, 2022, the WV DHHR Division of Early Care and Education announced that in order to maximize the continued availability of subsidized child care program benefits for essential workers, a new income threshold would be implemented. (Exhibits D-4 and D-5)
- 6) On October 03, 2022, the Respondent issued a notice advising the Appellant she was no longer eligible for child care services due to "Your gross monthly income of \$8,928.46 exceeds the 85% of the State Median Income for your family size." The notice further advised the last date the Appellant would receive child care payment assistance would be October 31, 2022. (Exhibits D-2 through D-5)

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.

CARES Act, Public Law 116-260, December 27, 2020 reads, in part:

The law expands flexibility to provide child care assistance to families and children, supports child care providers, and provides lead agencies with additional funds to prevent, prepare for, and respond to COVID-19. *CRRSA Act funds are supplemental discretionary CCDF funds.* [Emphasis added]

The American Rescue Plan Act of 2021 (ARPA) (Pub. Law 117-2), signed on March 11, 2021, reads, in part:

Nearly \$24 billion in Child Care Stabilization Grants to be allocated to states, territories, and Tribes. The goal of the child care stabilization grants is to provide rapid financial relief to child care providers to help them pay for unexpected business costs they faced as a result of the COVID-19 pandemic. By providing much needed economic relief to child care providers, this funding will help them stay open so that that they may continue to serve working families.

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.

WVCCSPP § 6.1.1 provides, in part:

The financial eligibility of each family receiving child care services shall undergo a status check periodically.

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 provides, in part:

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.

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. Effective March 24, 2020, West Virginia Governor Jim Justice issued Executive Order 9-20, The Stay-at-Home Order, closing all businesses that were deemed non-essential. In response to this order, the Respondent's Cabinet Secretary issued a memorandum on March 24, 2020, to all licensed and registered child care providers with instructions on how to become a registered critical care site provider. This memorandum allowed child care providers to remain open for all essential employees who continued to work during the healthcare crisis. These critical care child care sites were a temporary option for essential workers who had no other option for child care. The Appellant (hereafter, ██████████ and her spouse, ██████████ (hereafter, ██████████)) 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 an unknown date, in July 2022, a Notification of Redetermination for child care program benefits was issued to the Appellant. The Appellant submitted the completed packet to the Respondent which included monthly pay stubs for both ██████████. At the time of the July 2022 review, the Appellant's gross monthly income was determined to be \$8,928.46. However, because enhanced funding provided by the CARES Act stipulated that income limits could be waived for subsidized child care services for essential workers during the healthcare crisis, the Appellant and her spouse met the definition of essential workers and were not required to meet an income eligibility limit to receive continued subsidized child care services managed by Connect, a Child Care Resource and Referral Agency (CCR&R).

On September 15, 2022, the WV DHHR Division of Early Care and Education (DECE) announced that in order to maximize the continued availability of subsidized child care program benefits for essential workers, a new monthly income threshold below 85% of State Median Income would be implemented. The announcement further provided that "If your monthly income is above the monthly amount in red for your family size listed below, you will receive notice in October 2022 that your benefits will end October 31, 2022." On October 03, 2022, the Respondent issued a notice advising the Appellant she was no longer eligible for child care services due to "Your gross monthly income of \$8,928.46 exceeds the 85% of the State Median Income for your family size." The notice further advised the last date the Appellant would receive child care payment assistance would be October 31, 2022.

The Respondent testified that because new income guidelines were implemented, ██████████ were no longer eligible for continued benefits due to income above the 85% State Median Income level, as determined during the July 2022 review. ██████████ disputed the Respondent's decision to terminate child care program benefits and reasoned that due to the short notice and the cost of child care, finding alternative placement for their children would create a burden to the family financially. ██████████ did not contest that the income calculated during the July 2022 review surpassed the eligibility limit for subsidized child care program services. He did however, argue that finding and affording child care due to the time frame provided by the Respondent, would be challenging.

Policy specifies that the continued eligibility of each family receiving supplemental child care assistance services shall undergo a status check periodically in order to assess the continued need for services. Policy further stipulates that negative actions affecting the recipients of child care, other than the denial of an application, shall be mailed at least thirteen (13) days before the effective date of any action or decision which may be adverse to the client. Because the Respondent

issued adequate notice (October 03, 2022) to the Appellant advising the last date of eligibility was determined to be October 31, 2022, it is the finding of this Hearing Officer that the Respondent acted correctly to terminate the Appellant's child care services based on the gross monthly income amount of \$8,928.46 exceeding the 85% State Median Income threshold for the Appellant's family size.

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) Because the Appellant's gross monthly income exceeds the 85% State Median Income threshold, the Appellant is no longer eligible for subsidized child care program benefits.
- 5) Because the Appellant is no longer eligible for subsidized child care program benefits, policy stipulates that negative actions affecting the recipients of child care shall be mailed thirteen (13) days before the effective date of any action or decision which may be adverse to the client.
- 6) Because the Respondent provided adequate notice of the Appellant's ineligibility for subsidized child care program benefits, the Respondent's action to terminate the Appellant's benefits due to income was correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's subsidized child care services for essential workers.

ENTERED this _____ day of December 2022.

Angela D. Signore
State Hearing Officer