



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

February 9, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 21-BOR-2329

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: Angela Walters, Assistant Attorney General
[REDACTED]

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

████████████████████,

Appellant,

v.

Action Number: 21-BOR-2329

**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 February 1, 2022, on an appeal filed November 4, 2021.

The matter before the Hearing Officer arises from the October 8, 2021 decision by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by Angela Walters, Assistant Attorney General. Appearing as witnesses for the Respondent were Denise Richmond, Child Care Policy Specialist with Division of Early Care and Education; Dierdre Craythorne, Child Care Program Manager with Division of Early Care and Education, Donna England, Supervisor with MountainHeart Resource and Referral Agency, Michelle Platt, Program Manager with Division of Early Care and Education, Todd McDaniel, Program Manager with Division of Early Care and Education and Melanie Clark, Program Manager with the Division of Early Care and Education. The Appellant appeared by ██████████. All witnesses were sworn in and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 New Employment Verification Form received October 6, 2021
- D-2 Email between Carla Weaver and the Appellant from October 6 – October 13, 2021
- D-3 Email between Carla Weaver and Rebecca Reid dated October 8, 2021
- D-4 Child Care Parent Notification Letter Notice of Denial or Closure and Provider Notification Letter dated October 8, 2021

- D-5 Email between Carla Weaver and the Appellant from October 6 – October 12, 2021
- D-6 Paystubs dated September 24 and October 8, 2021 from [REDACTED]
- D-7 Email between Carla Weaver and the Appellant from October 19, 2021
- D-8 Email between Denise Richmond, Rebecca Reid, Susan McCoy and Donna England from October 15 – October 19, 2021
- D-9 Email between Carla Weaver and the Appellant dated October 19, 2021
- D-10 Memorandum dated March 24, 2020 – Critical Child Care Sites
- D-11 Request for Pre-Hearing Conference dated October 19, 2021
- D-12 Case Contact Log from October 8 – November 1, 2021
- D-13 Email between Denise Richmond and Donna England dated November 1, 2021
- D-14 Child Care Parent Notification Letter Notice of Denial or Closure dated November 1, 2021
- D-15 Hearing Request dated November 4, 2021
- D-16 Hearing Narrative
- D-17 CCDF Frequently Asked Questions in Response to COVID-19 (www.acf.hhs.gov)

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 was a recipient of subsidized Child Care benefits.
- 2) On October 6, 2021, the Appellant reported the onset of new employment with [REDACTED] to her case manager (Exhibit D-1).
- 3) In email correspondence with her case manager on October 6, 2021, the Appellant reported that she was working from home (Exhibit D-2).
- 4) The Appellant’s case manager requested the Appellant provide a work from home contract and HIPPA documentation from her employer to receive approval from the State Office (Division of Early Care and Education) to continue receiving Child Care benefits while working from home (Exhibit D-2).
- 5) On October 7, 2021, the Appellant notified her case manager via email that she was temporarily working from home as her employer had not completely set up an office in the area yet. The Appellant reported that she had not completed a HIPAA contract with her employer (Exhibit D-2).

- 6) On October 8, 2021, the Appellant's case manager was advised by MountainHeart Supervisor Susan McCoy that the Appellant's employment was not approved for her to work from home (Exhibit D-3).
- 7) The Respondent sent notice to the Appellant on October 8, 2021, advising that her Child Care benefits would be terminated effective October 21, 2021, as she was no longer in an approved work activity due to working from home (Exhibit D-4).
- 8) On October 12, 2021, the Appellant contacted her case manager after receiving the notice of termination and advised that her employer required that she have Child Care to eliminate background noise while working (Exhibit D-5).
- 9) On October 19, 2021, Child Care Program Specialist Denise Richmond with the Division of Early Care and Education provided clarification regarding the denial of telework as an approved activity for the Appellant to MountainHeart supervisor Rebecca Reid. Ms. Richmond indicated that due to COVID-19 related policy, only individuals who dealt directly with HIPPA were approved to telework due to Critical Care Child Care licensing requirements (Exhibit D-8).
- 9) On October 19, 2021, the Appellant's case manager advised the Appellant that the State Office was not approving telework as an approved activity and relayed the information that was provided by Ms. Richmond. The Appellant was provided with a copy of a policy memorandum dated March 24, 2020 from the Respondent's Cabinet Secretary that addressed Critical Care Child Care sites during the COVID-19 healthcare crises (Exhibits D-9 and D-10).
- 10) The Appellant requested to have a pre-hearing conference on October 19, 2021. During the pre-hearing conference conducted on October 25, 2021, the Appellant reported that she was on bedrest per physician's orders due to pregnancy. The Appellant was advised that only individuals who performed telehealth services could be approved to work from home (Exhibits D-11 and D-12).
- 11) The Respondent issued another closure notice on November 1, 2021, advising the Appellant that her case closure was due working from home and Critical Care Site Regulations (Exhibit D-15).
- 12) The Appellant requested a hearing on November 4, 2021 (Exhibit D-15).

APPLICABLE POLICY

Child Care Subsidy Policy Manual (Effective September 2020) §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.

§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.

§4.7 Policy Exceptions-Illness:

In certain extraordinary situations Child Care may be approved for children under the age of six years in the following circumstances: a family member's release from hospitalization; a recent determination of a temporary or permanent disability of a parent; physician ordered bed rest during pregnancy; medical treatment for a terminal illness. Exceptions are granted in order to give the family time to prepare and plan for coping with the illness and the effects of treatment and finding alternate Child Care arrangements/assistance.

§4.7.2.1 Hospitalization, Surgery, and Post Hospitalization/Surgery Recovery

For currently active cases, Child Care may be provided when a family member is hospitalized, requires in or out-patient surgery, and/or released from the hospital. In cases of hospitalization/surgery recovery (for hospital admissions exceeding 48 continuous hours), documentation shall include, but not be limited to:

A. A discharge plan and diagnosis and a treatment plan if one is developed to follow up the discharge plan.

B. The anticipated length of time for recovery.

C. The documentation shall be related to the parent's illness or the illness of a sibling for which hospitalization was required.

D. The approval period is limited to six weeks. If a longer recovery period is indicated by the physician in which minimal care and supervision of a child cannot be provided, the approval may be for a period not to exceed six months.

E. Post hospitalization/surgery recovery approvals will be considered only for an active Child Care case and will not be considered for a new application or intake.

§4.7.2.2 Recent Determination of Temporary or Permanent Disability.

A disability exception approval will not exceed 6 months. This category of policy exception is for one time only per Child Care case or same family. The exception is granted in order to give the family time to prepare and plan for coping with the disability and finding alternate Child Care arrangements/assistance in cases of newly determined temporary or permanent disability of the parent, the documentation shall include, but not be limited to:

- A. An official disability determination by a state or federal agency with a determination date that is within three months of the Child Care application or redetermination.
- B. A treatment plan and the medical statement by a licensed physician which describes how this condition prevents the care of children.
- C. A disability exception approval will not exceed 6 months.

§4.7.2.3 Bed Rest during Pregnancy.

If a physician orders bed rest during pregnancy, the approval period will not exceed the date of delivery, nor can the approval be for 24-hour care.

DISCUSSION

Effective March 24, 2020, West Virginia Governor Jim Justice issued Executive Order 9-20, The Stay-at-Home Order, closing all business 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 (Exhibit D-10).

The Appellant reported the onset of new employment in October 2021 and advised the Respondent that she would be temporarily working from home. The Respondent terminated the Appellant's Child Care benefits effective October 21, 2021, citing that she was no longer in an approved work activity. When the Appellant questioned which policy the decision to close her case was based upon, the March 24, 2020, memorandum from the Respondent's Cabinet Secretary was referenced (Exhibits D-8, D-9 and D-10).

Denise Richmond, Child Care Policy Specialist, testified that the decision to terminate the Appellant's Child Care benefits was not due to the Critical Care Child Care site memorandum. Ms. Richmond contended that at this time, only individuals who work with directly with telehealth are approved to telework to limit the number of children in group Child Care settings per Center for Disease Control (CDC) guidelines. Ms. Richmond testified that all requests for telework must be approved and the Appellant's job was determined to have no direct relation to HIPPA, telehealth or doctor/patient confidentiality.

Diedre Craythorne, Child Care Program Manager, testified that the Office of Child Care, the federal agency that provides funding for the Child Care program, provided clarification stating that essential workers could not work from home (Exhibit D-17). Based upon this information, Ms. Craythorne stated the decision was made when developing the state's Child Care policy to exclude teleworking as an approved activity. Ms. Craythorne contended that per the Office of Child Care, only individuals who worked with telemedicine could be approved to telework and receive Child Care services. This clarification was received by a telephone call with the Office of Child Care, sometime in March 2020. Ms. Craythorne testified that as long as the critical care licensure due to the public healthcare crisis is in effect, individuals are not allowed to telework unless working with

telehealth. Once the critical care licensing requirements are removed, an individual may be permitted to telework.

The Appellant's representative contended that the Appellant was provided with contradictory information regarding the closure of the Appellant's Child Care services, none of which applied to the Appellant's specific circumstances, and other than the Cabinet Secretary's March 24, 2020 memorandum, no policy was provided in writing to support the Respondent's action to terminate her services. Additionally, the Appellant reported to her case manager that she was on bed rest per orders from her physician, which is an exception found in Child Care policy.

Pursuant to the Respondent's Child Care Subsidy Policy, telework is an allowable work activity, if the recipient provides a telework contract from the employer or a statement from the employer documenting the recipient's work schedule. The Respondent contended that due to critical care licensing requirements in response to the public healthcare crisis, only individuals who work with telemedicine from home are permitted to telework. However, the Respondent was unable to provide any documentation of this change to its policy. The Respondent referenced a clarification from the Office of Child Care about essential employees being prohibited from working from home, but this policy does not address the Appellant's specific circumstances.

The Respondent failed to produce any policy or policy clarification specifically addressing critical care licensing regulations concerning the public healthcare crisis. The Cabinet Secretary's March 24, 2020 memorandum that permitted essential employees to continue receiving Child Care services during Governor Jim Justice's Stay-at-Home Order is no longer relevant almost two (2) years later. All business in West Virginia have since returned to normal capacity and all employees, deemed essential or otherwise, have returned to work. The critical care licensing requirement would only apply if only essential employees were eligible to receive subsidized Child Care, which is certainly no longer the case.

Furthermore, the Appellant reported that she is on physician-ordered bed rest due to her pregnancy during the pre-hearing conference held on October 25, 2021. The Respondent made no attempt to consider this allowable policy exception for the Appellant to continue receiving Child Care services.

The Appellant demonstrates the need for Child Care by participating in a qualifying activity that prevents her from providing care and supervision of her children during the time she is participating in an activity. Child Care Subsidy Policy permits a recipient to telework if documentation verifying the days and hours telework is approved for is provided. The Appellant did not have a telework contract but provided the New Employment Verification form to her case manager on October 6, 2021 that was completed by her employer listing the days she would work. The Appellant was not given the opportunity to provide additional information from her employer if the New Employment Verification form was insufficient.

Whereas the Appellant demonstrates the need for Child Care as defined by policy, and policy allows for Child Care recipients to telework, the Respondent failed to follow its own policy in terminating her Child Care services. The Appellant also meets a medical exception in policy by being on bed rest during her pregnancy. While the Respondent argued that it received clarification

from the Office of Child Care regarding telework in a telephone call, the Board of Review cannot consider a hearsay conversation in the place of actual policy or other policy interpretations that are not made available to the public through its policy manual.

The decision of the Respondent to terminate the Appellant's Child Care services based on an internal memorandum or conversation not included in existing policy cannot be affirmed.

CONCLUSIONS OF LAW

- 1) The Appellant meets the need for Child Care by working in the private sector as defined by Child Care Subsidy Policy.
- 2) Policy allows Child Care recipients to receive services while teleworking if telework is approved and documented by the employer.
- 3) The Appellant meets a medical exception found in policy by being on bed rest during her pregnancy.
- 4) The Respondent's decision to terminate 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 terminate the Appellant's Child Care benefits. The case is hereby **REMANDED** to the Respondent to evaluate the Appellant's income-eligibility for Child Care services and allow the Appellant to provide any documentation from her employer regarding her telework schedule and documentation from her physician regarding her medical exemption. The Respondent must restore any lost benefits to the Appellant retroactive to the date of termination.

ENTERED this 9th day of February 2022.

Kristi Logan
Certified State Hearing Officer