



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

Martha Yeager Walker
Secretary

Joe Manchin III
Governor

Board of Review
4190 West Washington Street
Charleston, West Virginia 25313
Email: raywoods@wvdhhr.org
May 19, 2005

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 1, 2005. Your hearing request was based on the Department of Health and Human Resources' (hereinafter MountainHeart Child Care Services) action to deny payment for child care services prior to your date of application.

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.

Eligibility and benefit levels for Child Care are determined based on current regulations. One of these regulations specifies:

In cases where parents have joint custody or share custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families. Each parent is responsible for paying the fee on the days the child is in his or her custody. (Office of Social Services Division of Child Care - Policy & Procedures Manual, Chapter 3 (C) (2) Reside with his/her parents).

Information and testimony submitted at the hearing revealed: You did not have an active child care case to receive benefits.

It is the decision of this State Hearing Officer to UPHOLD the decision of MountainHeart Child Care Services to deny the payment for child care services.

Sincerely,

Ray B. Woods, Jr., M. L. S.
State Hearing Officer
Member, State Board of Review

cc: State Board of Review

Jennifer Lusk, Site Supervisor – MountainHeart Child Care Services

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 19, 2005 for Mr. _____.

This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was scheduled on April 1, 2005 on a timely appeal filed February 23, 2005.

It should be noted that Mr. _____'s Child Care Services case was open at the time of the fair hearing.

All persons providing testimony were placed under oath. This issue could not be resolved in a pre-hearing conference. Mr. _____ did not have legal representation.

II. PROGRAM PURPOSE

The program entitled Child Care is set up cooperatively between the Federal and State Government and administered by the West Virginia Department of Health and Human Resources.

Child Care is a service which offers direct care and protection of infants, preschool, and school-age children during a portion of a twenty-four (24) hour day inside or outside of the child's own home. Child Care is generally provided to children under the age of thirteen (13). In some situations, such as mental retardation, physical or behavioral disorders, or the need for supervision for children under court supervision, a child care plan up to age eighteen (18), may be considered.

III. PARTICIPANTS

_____, Claimant

_____, Mother

Kevin Green, Case Manager – MountainHeart Child Care Services

Heather Jones, Receptionist – MountainHeart Child Care Services

Jennifer Lusk, Site Supervisor – MountainHeart Child Care Services

Presiding at the hearing was Ray B. Woods, Jr., M. L. S., State Hearing Officer and a member of the State Board of Review.

IV. QUESTION(S) TO BE DECIDED

Is Mr. _____ eligible for child care services prior to his January 14, 2005 application?

V. APPLICABLE POLICY

Office of Social Services Division of Child Care - Policy & Procedures Manual, Chapter 3 (C)
(2) Reside with his/her parents

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED

DEPARTMENT'S EXHIBITS:

- D-1 Hearing Summary
- D-2 Office of Social Services Division of Child Care - Policy & Procedures Manual, Chapter 3 (C) (2)
- D-3 Copy of IG-BR-29 with Fair Hearing Request Attached
- D-4 Copy of Scheduling Notice dated 02/23/05
- D-5 Application for Child Care Services dated 01/14/05
- D-6 Notification of New Applicants dated 01/14/05
- D-7 Provider Notification Letter – Parent's Eligibility For Child Care
- D-8 Fax from [REDACTED] DHHR to MountainHeart dated 01/14/05 re: Household Composition and Earnings Verification
- D-9 Notification of New Applicants dated 01/18/05
- D-10 Provider Notification Letter – Parent's Eligibility For Child Care dated 01/18/05
- D-11 Child Care Parent Notification of Redetermination dated 01/25/05
- D-12 Provider Notification Letter – Parent's Eligibility For Child Care dated 01/25/05
- D-13 Request for Payment Child Care Services dated 01/03/05
- D-14 Statement from _____, Child Care Provider dated 02/11/05
- D-15 Child Care Certificate dated 01/18/05
- D-16 Child Care Parent Services Agreement dated 01/14/05
- D-17 Office of Social Services Division of Child Care - Policy & Procedures Manual, Chapter 3 (H)
- D-18 Child Care Attendance Sheet

VII. FINDINGS OF FACT

- 1) Mr. Kevin Green read the following Hearing Summary:

My initial contact with _____ occurred on December 20, 2004 at approximately 1:00 p.m. according to the Client/Visitor sign in sheets from our front desk. Mr. _____ came to the R&R office regarding his child, _____'s child care provider. During the conversation which took place entirely at the receptionist desk, Mr. _____ requested that I change his child's provider from Learning Tree to _____. I knew that Mr. _____ did not have an active case with MountainHeart Child Care. Mr. _____'s child was involved in an active case that the mother, _____, had opened on August 19, 2004. I stated to Mr. _____ that he did not have an active case with MountainHeart Child Care and could not change providers. He informed me that he was

the father. I restated to Mr. _____, "You are not listed in the case. You cannot do anything in this case." Mr. _____ then stated that he wanted to pick up the Change of Provider form to take to the mother because she was currently hospitalized and was unable to come to the R&R office to complete the form herself. He asked if he may take the form to her, to which I stated that there was no problem with her completing the form and return it by mail or having it returned for her. I stated to Mr. _____ that Ms. _____ must provide the form within five days of beginning child care with the new provider. He took the form and left our office.

The Change of Provider form returned by mail to the R&R office on December 30, 2004. The form showed a change of provider from Learning Tree to _____. The change was made accordingly to Ms. _____ case assuming that she had requested the change and had _____ in her custody. _____ submitted a Request for Payment form on January 03, 2005 on which she billed for _____ from December 28, 2004 through December 31, 2004. Ms. _____ listed _____ as the parent on the Request for Payment form and Mr. _____ signed the child in and out daily. I contacted Ms. _____ by telephone concerning the father's name on the Request for Payment form because I had no way to contact Mr. _____ at this point in time. I first asked Ms. _____ if Mr. _____ was temporarily caring for _____ during the reported hospitalization of _____. She stated that she believed the child was already living with Mr. _____ at this time. I then questioned Ms. _____ of her knowledge of the custody arrangement between Ms. _____ and Mr. _____. She stated again that she believed the child lived with the father but was not sure of the actual custody arrangement. I explained to Ms. _____ that Child Care Policy Chapter 3 states, "In cases where parents have joint custody or share custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families." I explained to Ms. _____ that no payment could be made to her if Mr. _____ has shared custody of the child because he had not applied for his own case. Ms. _____ was informed that any time before the date of application would be a private pay arrangement between herself and Mr. _____ if he shared custody of the child. If this had been a case of the father helping the mother care for the child while she was hospitalized but no shared custody was involved, medical documentation would have been requested to verify the dates of care in question. I notified Ms. _____ that her payment form was missing totals and would be returned to her for correction. I also asked that she have Mr. _____ contact me regarding the custody issue.

_____ came to the R&R office to discuss the custody issue. He stated that there was nothing legal between himself and Ms. _____ but that they did share custody. I explained Child Care Policy Chapter 3 to Mr. _____ and told him that he would need to complete his own application. I reminded Mr. _____ that I had told him during his first visit that he was not in the case and he could not do anything in the case. He said that he did not know that meant he couldn't use the case. I explained to him that because he shared custody with Ms. _____ and did not have his own case he would be responsible for making private pay arrangements to Ms. _____. Mr. _____ completed an application on Friday, January 14, 2005. His application was pending verification of employment. Mr. _____ was approved beginning January 14, 2005 based upon verification received January 18, 2005 of his employment with _____ Ski Resort. Ms. _____ resubmitted the Request for Payment form with necessary corrections made on January 19, 2005. Both Ms. _____ and Mr. _____ were issued letters on January 25, 2005 stating that Mr. _____ was not an active client before January 14, 2005 and no

payment could be made before his approval date and that Mr. _____ would be responsible for making all payment for unapproved days of care.

Mr. _____ was in an automobile accident soon after his application and Ms. _____ has not billed for _____ since the days in question in December 2004. No payment has been made to any child care provider for Mr. _____'s daughter since his case has opened on January 14, 2005. April 14, 2005 will mark 90 days without payment. Child Care Policy Chapter 3 states, "Therefore, any case which has not utilized child care for a 3 month period or longer shall be sent a notice that the case will be closed," and "Procedures for notification to the parent and the provider of a negative action shall be followed."

- 2) Ms. Heather Jones confirmed the conversation between Mr. _____ and Mr. Green on January 14, 2005.
- 3) Mr. _____ disputed the understanding he had with Mr. Green about child care eligibility.
- 4) Ms. _____, Day Care Provider, submitted a bill in the amount of \$460.00 to MountainHeart for payment. It listed thirteen (13) days for care provided to _____.
- 5) Mr. _____ is not eligible for child care services prior to his January 14, 2005 application.

VIII. CONCLUSIONS OF LAW

- 1) Office of Social Services Division of Child Care - Policy & Procedures Manual, Chapter 3 (C) (2) Reside with his/her parents:

In cases where parents have joint custody or share custody of their children and both parents are eligible to receive child care assistance, the parents shall have separate cases and shall be entered into FACTS as two (2) families. Each parent is responsible for paying the fee on the days the child is in his or her custody. The amount of fee paid is determined as follows:

- A. When the parents use different providers, each parent must pay the fee amount based on his or her income.
- B. When the parents use the same provider, each parent shall pay the amount of the lowest assessed fee.

IX. DECISION

It is the decision of this State Hearing Officer to UPHOLD the decision of MountainHeart Child Care Services to deny payment for child care services.

X. RIGHT OF APPEAL

See Attachment.

XI. ATTACHMENTS

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29