



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

May 29, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-1785

Dear Ms. [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: Claimant's Recourse to Hearing Decision  
Form IG-BR-29

Cc [REDACTED]

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

██████████,

**Appellant,**

v.

**Action Number: 15-BOR-1785**

**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 May 27, 2015, on an appeal filed April 9, 2015.

The matter before the Hearing Officer arises from the March 27, 2015 decision by the Respondent to deny the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by ██████████, Site Supervisor, ██████████, ██████████. Appearing as a witness for the Respondent was ██████████, Case Manager, ██████████. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Income/expense summary and Department's wage calculation for Appellant's business from July 2014 - January 2015
- D-2 Appellant's income log
- D-3 Appellant's expense log
- D-4 Information concerning Appellant's documented work hours
- D-5 West Virginia Child Care Subsidy Policy & Procedures Manual Sections 3.5.1.1, 5.2.1, 5.2.1.1 and 5.2.1.2

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 Child Care benefits and was notified on March 27, 2015, that her application was denied because she failed to meet minimum wage requirements for self-employed individuals.
- 2) [REDACTED], Case Manager for [REDACTED], hereinafter [REDACTED] testified that the Appellant submitted income and expense information for the [REDACTED] of which she has been co-owner since [REDACTED] (D-2, D-3 and D-4). Ms. [REDACTED] indicated that the Appellant splits expenses for the [REDACTED] with her co-owner.
- 3) Ms. [REDACTED] determined the Appellant's income for the period of July through December 2014 to be \$8,833 and her expenses for the same period to be \$4,159.71. She determined that the Appellant's income for January 2015 was \$1,425 and her expenses were \$782.62. Ms. [REDACTED] testified that [REDACTED] reviewed income/expenses from the selected period to obtain a more accurate calculation of the Appellant's income since the Appellant had just returned from maternity leave.
- 4) Based on income/expense verification and information concerning hours worked (D-4) (also provided by the Appellant), Ms. [REDACTED] determined that the Appellant's hourly wage from July to December 2014 was \$6.28 and her hourly wage for January 2015 was \$5.63.
- 5) Ms. [REDACTED] testified that Child Care policy requires self-employed individuals to earn at least the equivalent of minimum wage (\$7.25 per hour at the time of application) to qualify for Child Care benefits.
- 6) The Appellant did not dispute [REDACTED] income calculations, but testified that she had never kept track of her hours worked and was simply providing an estimate based on her appointment books. She testified that the reported hours worked may not have been accurate. [REDACTED], Site Supervisor for [REDACTED] testified that the Appellant could reapply for Child Care benefits.

### **APPLICABLE POLICY**

West Virginia Child Care Subsidy Policy & Procedures Manual Section 3.5.1.1 (D-5) states that self-employed Child Care recipients must make at least the current state minimum wage for each hour of work performed to be eligible for services.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 5.2.1 states that net income from non-farm self-employment is based on gross receipts minus allowable expenses.

Section 5.2.1.1 provides information on methods of income verification and Section 5.2.1.2 addresses allowable and disallowed self-employment expenses.

### **DISCUSSION**

Child Care Policy states that self-employed Child Care recipients must make at least the current state minimum wage for each hour of work performed to be eligible for services. The Appellant provided information to [REDACTED] concerning her income, expenses and hours worked. Based on that information, [REDACTED] determined that the Appellant's average hourly wage for the period of July-December 2014 was \$6.28 and her average hourly wage for January 2015 was \$5.63. As the state minimum wage was \$7.25 at the time of application, the Department acted correctly in denying the Appellant's Child Care application.

### **CONCLUSIONS OF LAW**

The Department acted correctly in denying the Appellant's Child Care benefits based on failure to meet minimum wage requirements for self-employment.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department's action to deny the Appellant's Child Care benefits.

**ENTERED this 29<sup>th</sup> Day of May 2015.**

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**Pamela L. Hinzman  
State Hearing Officer**

