



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

July 24, 2015



RE: [REDACTED] v. WVDHHR
ACTION NO.: 15-BOR-2025

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 Melissa Harvey, Child Care Resource Center

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

██████████,

Appellant,

v.

Action Number: 15-BOR-2025

**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 July 23, 2015, on an appeal filed May 21, 2015.

The matter before the Hearing Officer arises from the March 24, 2015 decision by the Respondent to terminate the Appellant's Child Care benefits and the Respondent's April 7, 2015 decision to seek repayment of Child Care benefits.

At the hearing, the Respondent appeared by Melissa Harvey, Director, Child Care Resource Center. Appearing as a witness for the Respondent was Kelly Coen, Care Coordinator, Child Care Resource Center. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Child Care Parent Services Agreement signed on December 3, 2014
- D-2 Application for Child Care Services dated December 3, 2014
- D-3 Appellant's pay stubs from ██████████
- D-4 Income Calculator
- D-5 Child Care Certificate dated December 3, 2014
- D-6 West Virginia Child Care Subsidy Policy & Procedures Manual Appendix A, Sliding Fee Scale for Child Day Care Services
- D-7 New Employment Verification from ██████████
- D-8 Income Calculator
- D-9 West Virginia Child Care Subsidy Policy & Procedures Manual Section 8.3.1
- D-10 Child Care Parent Notification Letter Notice of Denial or Closure dated March 24, 2015
- D-11 Child Care Parent Notification Letter Notice of Denial or Closure dated April 7, 2015

- D-12 Request for Pre-Hearing Conference dated April 17, 2015 and written correspondence from Appellant
- D-13 Correspondence to Appellant from Kelly Coen dated April 22, 2015
- D-14 Fair Hearing Request dated May 21, 2015 and written correspondence from Appellant

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 on December 3, 2014, signing a Child Care Parent Services Agreement (D-1) and an Application for Child Care Services (D-2). At the time of application, the Appellant provided two pay stubs from [REDACTED] for the periods of October 19, 2014 through November 1, 2014, and November 2, 2014 through November 15, 2014 (D-3). Based on the income information provided, the Appellant was approved for Child Care benefits (D-5). It should be noted that the Signature section of the Application for Child Care Services (D-2) signed by the Appellant contains rights and responsibilities, stating that an individual must repay any benefits received as the result of an error caused by the applicant or the Agency.
- 2) Melissa Harvey, Director, Child Care Resource Center, testified that the Appellant's case worker erred by failing to use the Appellant's anticipated income at the time of the December 2014 application. She contended that income used by the worker was not representative of the Appellant's anticipated income because the pay stub for the period ending November 1, 2014 included only three days of pay, as the Appellant had just started work at [REDACTED] on October 29, 2014. Exhibit D-7 reveals that the Claimant worked at the facility for 37.5 hours per week at \$18.65 per hour (for an average gross weekly income of \$699.38, or \$1,398.76 bi-weekly). When using the bi-weekly income calculator of 2.15, the Appellant's total gross monthly income was calculated as \$3,007.33, which exceeds the Child Care intake cap of \$2,474 for a three-person family (D-6).
- 3) As a result of the Agency error, Ms. Harvey testified that the Appellant is required to repay \$2,792 in Child Care benefits for the period of December 2014 through March 2015 (see Exhibit D-13).
- 4) The Appellant testified that she did not misrepresent her income at the time of application and that the worker committed the error. She stated that she has no paperwork indicating that she would have to repay benefits issued to her due to a clerical error. The Appellant asserted that many people abuse the "system" and that she provided everything she was asked to provide to the Department. A single mother, the Appellant testified that she now

has to work 16-hour shifts to pay for Child Care benefits, which has reduced the amount of time she is able to spend with her children. In addition, she stated that she does not make enough money to repay the Child Care benefits.

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy & Procedures Manual Section 8.3.1 (D-9) states that improper payments due to worker error are defined as payments that should not have been made, or that were made in an incorrect amount due to worker error in determining and verifying eligibility, and/or calculation and input of information into the Family and Children's Tracking System (FACTS). Incorrect amounts include overpayments, underpayments and inappropriate denials of payment. Section 8.3.1.2 of the manual states that it is the Child Care Resource and Referral's responsibility to collect improper payments in this instance, regardless of the amount.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 5.0 states that to determine the financial eligibility of applicants for or recipients of child care, it is necessary to determine:

- A. The size of the family.
- B. The amount and source of monthly gross income received by all members of the family and calculate the monthly gross income for the family.
- C. If the monthly gross income of the applicant's family falls below the maximum allowable income by comparing the family's monthly gross income to the amount listed in the chart contained in Appendix A as appropriate for the family size. Families whose income falls at or below the appropriate level are eligible.

The R&R worker shall use the following general procedures and guidelines to calculate family size, verify monthly gross income, and determine types of income to count or exclude to establish eligibility for child care. See Appendix A for income eligibility guidelines. (Appendix A states that the intake cap for a three-person family is \$2,474 per month).

West Virginia Child Care Subsidy Policy & Procedures Manual Section 5.2.1.2 states that employment income must be verified by the client by submitting one of the following:

- A. One month's worth of check stubs, or
- B. The New Employment Verification Form (ECE-CC-1B) in the case of new employment situations in which the applicant has not yet received pay. 1.) Clients using the ECE-CC-1B to verify employment must submit one month's worth of check stubs to the agency as soon as they are received.

DISCUSSION

Child Care Policy states that a worker must use either 30 days of income or the New Employment Verification Form (ECE-CC-1B) to calculate an applicant's anticipated income. The case worker clearly erred in failing to calculate the Appellant's anticipated income at the time of her December 2014 Child Care application. As the Appellant's corrected income exceeded the intake cap at the time of her application, the Department's action to terminate Child Care benefits upon discovery of the Agency error was correct. Policy requires that overpayments of Child Care benefits caused by an Agency error must be repaid.

CONCLUSIONS OF LAW

The Department acted correctly in terminating the Appellant's Child Care benefits based on excessive income and in requiring repayment of benefits the Appellant received to which she was not entitled.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Department's action to terminate the Appellant's Child Care benefits and seek repayment.

ENTERED this 24th Day of July 2015.

Pamela L. Hinzman
State Hearing Officer