



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW  
416 Adams St.  
Fairmont, WV 26554

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

August 24, 2015

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 15-BOR-2264

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,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision  
Form IG-BR-29

cc: [REDACTED], [REDACTED]

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

██████████,

**Appellant,**

**v.**

**Action Number: 15-BOR-2264**

**CHILD CARE RESOURCE CENTER  
/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 August 19, 2015, on an appeal filed June 8, 2015.

The matter before the Hearing Officer arises from the June 8, 2015 decision by the Respondent to terminate Appellant's subsidized Child Care benefits.

At the hearing, the Respondent appeared by ██████████, Director, ██████████ (██████████). Appearing as a witness for Respondent was ██████████, Supervisor, ██████████. The Appellant appeared pro se.

**Respondent's Exhibits:**

- |           |  |
|-----------|--|
| Exhibit-1 | WVDHHR Application for Child Care Services dated 5/14/15   |
| Exhibit-2 | Electronic Mail (E-Mail) correspondence dated 5/11/15 – "Welcome To The Criminal Justice Program at ██████████"                  |
| Exhibit-3 | Kaplan University Course Syllabus for the May 2015 term (5/13/15 – 6/23/15)  |
| Exhibit-4 | Child Care Certificate issued on 5/18/15   |
| Exhibit-5 | Termination notice dated 6/8/15  |
| Exhibit-6 | Appellant's written request for hearing dated 6/8/15   |
| Exhibit-7 | E-Mail correspondence between WVDHHR Child Care Policy Specialist and the ██████████ during the period of 6/5/15 through 6/11/15 |
| Exhibit-8 | Termination notice dated 6/12/15   |

**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) On May 14, 2015, Appellant completed an Application for Child Care Services (Exhibit-1). Appellant reported she enrolled in a web-based graduate program at [REDACTED] ( [REDACTED] ) that began on May 13, 2015.
- 2) Appellant provided a copy of an Electronic Mail (E-Mail) she received confirming enrollment at [REDACTED] (Exhibit-2), as well as a course syllabus (Exhibit-3) – “Introduction to Graduate Studies in Public Safety” – that confirms her class would last from May 13, 2015 to June 23, 2015, and that she is required to participate in her web-based class every Thursday (8p.m.-9p.m.). Among the information included in the E-Mail correspondence was a section entitled “The following items are deemed important for your success as a student.” Included in this section was the statement – “In order to make a commitment to yourself and to your future, you will need to dedicate 15-25 hours per week to each of your classes.”
- 3) The Appellant was approved for subsidized Child Care benefits (Exhibit-4) effective May 18, 2015 for two (2) children – 6 hours per day, 4 days per week.
- 4) On June 8, 2015, Appellant was notified that her Child Care case had undergone an audit and the determination was made that she was found to be ineligible for subsidized child care benefits due to Child Care Subsidy Policy regarding web-based and/or correspondence learning (Exhibit-9). The Appellant requested a pre-hearing conference/hearing on June 8, 2015 and benefits were continued pending the hearing decision.
- 5) Subsequent to the pre-hearing conference, representatives from the [REDACTED] requested that the West Virginia Department of Health and Human Resources (WVDHHR) Child Care Policy Specialist review Appellant's case (Exhibit-7) a second time for eligibility, and provided additional information in support of continuing the Appellant's subsidized Child Care benefits. This request indicated that the Appellant has three (3) children under the age of four (4) years old, and she was pregnant with her fourth child, due in July 2015. The correspondence goes on to indicate that the Masters of Science Homeland Security

and Emergency Management course is an 18-month accelerated graduate program, and one (1) class requires a weekly commitment of 15-25 hours per week. The WVDHHR's Child Care Policy Specialist responded in her June 11, 2015 E-Mail (Exhibit -7), and indicated, in pertinent part – "At this point we are continuing to deny this. If at some point she picks up a full slate of classes, we will reconsider. However, as she is only registered for the one class, and she has a computer at home, this is denied."

- 6) On June 12, 2015, Appellant was again notified that she was ineligible for subsidized Child Care benefits due to the web-based and/or correspondence learning Child Care policy.
- 7) As a matter of record, Appellant acknowledged that her class meets only one time per week on Thursday, 8p.m. to 9p.m., however, she contended that she would be unable to complete the reading, research and writing required to complete her course of study without child care assistance. Appellant further noted that [REDACTED] only offers evening class participation courses because it caters to students who are employed and/or has family commitments.

### **APPLICABLE POLICY**

Child Care Subsidy Policy & Procedures Manual §4.5.1 (Web Based and/or Correspondence Learning) states that when parents are involved in educational web-based or correspondence learning from accredited universities or colleges, child care for the class period can only be approved if:

4.5.1.1 All of the following are met:

- A. The class is offered only at a regularly scheduled time (i.e. 11:00 am every Monday and Wednesday). Web based classes that the parent may take at any time do not fit this criteria, as the parent may log on while children are sleeping or involved in other activities.
- B. The child(ren) in need of care are under the age of six.
- C. There is not another parent in the home available to take care of the child(ren).

**OR**

- 4.5.1.2 The parent must leave the home to have access to a computer, and the children in need of care are under the age of six.
- 4.5.1.3 The R&R worker may appeal to ECE staff for approval of Child Care services if there are special circumstances. ECE staff will review the case and approve or deny services based on case facts and consultation with the Child Care Program Manager.

### **DISCUSSION**

Pursuant to Child Care regulations found in §4.5.1.1, the Appellant is enrolled in educational web-based course from an accredited university, her class is offered only at a regularly scheduled time (8p.m.-9p.m.), the children in need of care are under the age of six (6) years old, and there

is no other parent in the home available to take care of the children. While policy provides for other circumstances that may also qualify an applicant, the Appellant clearly meets the policy criteria as written. Although Respondent could make the argument that a day care center is not open when the Appellant is required to participate in her web-based class, policy does not include provisions that specify when web-based classes must be attended. In addition, [REDACTED] has advised that among those things identified for student success is the commitment to dedicate 15-25 hours per week to each class.

### **CONCLUSION OF LAW**

The Appellant clearly met the web-based and/or correspondence learning policy criteria required to qualify for subsidized Child Care benefits, as written in the Child Care Subsidy Policy Manual in §§4.5.3 and 4.5.3.1.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's proposal to terminate Appellant's Child Care assistance benefits.

**ENTERED this \_\_\_\_ Day of August 2014.**

---

**Thomas E. Arnett  
State Hearing Officer**