



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

November 5, 2015



RE: [REDACTED] v. CCRC/WVDHHR  
ACTION NO.: 15-BOR-3244

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: Melissa Harvey, Child Care Resource Center

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

██████████,

**Appellant,**

**v.**

**Action Number: 15-BOR-3244**

**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 November 3, 2015, on an appeal filed October 9, 2015.

The matter before the Hearing Officer arises from the September 21, 2015 decision by the Respondent to deny Appellant's application/redetermination for subsidized Child Care benefits.

At the hearing, the Respondent appeared by Melissa Harvey, Director, Child Care Resource Center (CCRC). Appearing as witnesses for Respondent were Kevin McIlwain, Child Care Specialist, Division of Early Care and Education; and Kelly Coen, Supervisor, CCRC. The Appellant appeared pro se.

**Respondent's Exhibits:**

- #1 Parent Services Agreement – signed 4/7/15
- #2 Child Care Certificates – signed on 4/7/15 and 5/22/15
- #3 Child Care Parent Notification of Redetermination – dated 8/27/15
- #4 Child Care Status Check forms completed and signed by Appellant – received by CCRC on 9/11/15
- #5 Letter from client submitted on 9/11/15 regarding her return to ██████████
- #6 Two (2) bi-weekly paycheck stubs verifying employment earnings – 8/14/15 (\$504) and 8/28/15 (\$634.50)
- #7 Child Care Parent Notification Letter Notice of Denial or Closure – dated 9/15/15
- #8 Child Care Parent Notification Letter Notice of Denial or Closure – dated 9/21/15
- #9 Letter from ██████████ submitted on 9/25/15
- #10 Letter from ██████████, submitted on 9/25/15

- #11 Appellant's written request for hearing – received 10/9/15
- #12 WV Child Care Subsidy Policy §1.2.26
- #13 WV Child Care Subsidy Policy §3.5.3
- #14 Electronic Mail (E-Mail) policy clarification from the Division of Early Care and Education regarding minimum wage and individuals who are working out of state

**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) Appellant was an active recipient of subsidized Child Care benefits (Exhibits 1 & 2), and was notified on August 27, 2015, via a Child Care Parent Notification of Redetermination (Exhibit 3), that she must complete and return the enclosed form, and provide needed verifications by September 15, 2015, or her case would be closed on September 30, 2015.
- 2) As a matter of record, the Appellant provided all requested information and indicated that while she had briefly changed employers during her previous certification period, she returned to work at [REDACTED] on September 21, 2015 (Exhibit 9), an employer located in [REDACTED]. This is the same employer for whom the Appellant worked when her previous Child Care benefits were approved, and her hourly employment earnings were again verified to be \$7.25 per hour – the prevailing federal and [REDACTED] minimum wage.
- 3) Respondent's representatives acknowledged that neither the change in employers during the previous certification period, nor Appellant's gross monthly income at [REDACTED] prompted the redetermination denial. Respondent noted that the minimum wage in West Virginia increased to \$8 per hour effective January 1, 2015, and because the Appellant is now making an hourly wage that is less than the amount of minimum wage in West Virginia (Exhibits 12, 13 and 14), she is no longer eligible for Child Care benefits. Respondent acknowledged that Appellant appears to be a nonexempt employee and was otherwise eligible for subsidized Child Care benefits.

**APPLICABLE POLICY**

Child Care Subsidy Policy & Procedures Manual §1.2.26 defines minimum wage as the prevailing minimum wage mandated by state law in the state of West Virginia.

Child Care Subsidy Policy & Procedures Manual §3.5 (**Wage Requirements**) stipulates that applicants receiving child care assistance in order to work must earn wages that comply with applicable federal and state laws. Child care funds cannot be used to support employment with

employers who do not comply with the Fair Labor Standards Act and/or West Virginia Division of Labor Wage and Hour laws.

The Child Care Subsidy Policy & Procedures Manual §3.5.1.2 defines the **Fair Labor Standards Act (FLSA)** as a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments. Per the FLSA, where Federal and state law have different minimum wage rates, the higher standard [of payment] applies. This policy goes on to indicate at §3.5.1.4 **Nonexempt employee** – Any employee in the private or public sector who is covered by the Federal Fair Labor Standards Act regulations. These employees must be paid minimum wage.

Policy found in the Child Care Subsidy Policy & Procedures Manual at §3.5.2.1 (**Nonexempt Employees**) provides that any recipient of child care assistance who is nonexempt employee in the private sector must at least be paid either (emphasis added) Federal/State minimum wage for all hours of work performed. If the recipient is not making at least the applicable federal or state minimum wage (emphasis added) for all work performed, the recipient will not be eligible for child care services.

Pursuant to Child Care Subsidy Policy & Procedures manual §3.5.3.A, the federal minimum wage is \$7.25 per hour effective July 24, 2009. This policy goes on to indicate (§3.5.3.B) that exceptions to the federal minimum wage requirements are those employees covered by state laws, those employees who customarily receive gratuities and exempt employees.

The Child Care Subsidy Policy & Procedures Manual §3.5.3.2.A provides that the state minimum wage is \$7.25 per hour effective July 1, 2008 and §3.5.2.3.B indicates that the exceptions to the state minimum wage includes those employees covered by federal laws (emphasis added), employers who implement a training wage of \$5.15 per hour for persons under 20 years of age (when specific conditions are met) and exempt employees. It is noted that the regulations have not been updated to include the January 1, 2015 increase in the West Virginia minimum wage to \$8 per hour.

## **DISCUSSION**

Employment income (Wage Requirements) outlined in the Child Care regulations provide that applicants receiving Child Care benefits in order to work must earn wages that comply with applicable federal and state laws, as the Child Care subsidy program only supports employment with employers who comply with the Fair Labor Standards Act (FSLA) and/or (emphasis added) West Virginia Division of Labor Wage and Hour laws. The regulations further indicate that any recipient of Child Care assistance who is a nonexempt employee in the private sector must at least be paid either (emphasis added) Federal/State minimum wage for all hours of work performed. While the Child Care regulations provide a program definition of minimum wage that focuses solely on the prevailing minimum wage in the state of West Virginia, the “Wage Requirements” section of the Child Care policy clearly addresses the minimum wage regulatory standard and does not disqualify otherwise eligible West Virginia residents who are employed with an out-of-state employer that is in compliance with the FSLA minimum wage regulatory requirements.

### **CONCLUSIONS OF LAW**

- 1) The minimum wage standard for subsidized Child Care benefits is not based solely on the prevailing minimum wage in West Virginia, as the wage requirement section of policy clearly includes residents whose out-of-state employers pay less than the minimum wage standard in West Virginia, but comply with the federal Fair Labor Standards Act.
- 2) Evidence received at the hearing demonstrates Appellant is receiving employment wages consistent with the minimum wage regulatory requirements, as outlined in Child Care policy.

### **DECISION**

It is the decision of the State Hearing Officer to REVERSE the Respondent's decision to deny Appellant's application/redetermination for Child Care assistance benefits effective October 1, 2015.

**ENTERED this \_\_\_\_ Day of November 2015.**

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**Thomas E. Arnett  
State Hearing Officer**