January 28, 2015

RE: [Redacted] v. WVDHHR
ACTION NO.: 14-BOR-3827

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


Claimant,
v.

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 January 21, 2015, on an appeal filed December 5, 2014.

The matter before the Hearing Officer arises from the September 18, 2014 decision by the Respondent to terminate Child Care benefits effective October 2014, and the denial of Child Care payments for August and September 2014.

At the hearing, the Respondent appeared by , Supervisor of Family Services,. The Claimant 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 dated July 9, 2014
D-2 Notification of New Applicants dated July 23, 2014
D-3 Child Care Parent Notification Letter Notice of Denial or Closure dated September 18, 2014
D-4 Child Care Parent Notification Letter Notice of Denial or Closure dated October 7, 2014
D-5 Requests for Payment of Child Care Services from After-School Program for August and September 2014
D-6 Electronic Mail Transmission from to dated October 7, 2014
D-7 Letter to After-School Program dated October 8, 2014
D-8 Letter from Claimant dated October 15, 2014
D-9 Notification of New Applicants dated October 15, 2014
D-10 Letter from Claimant (undated)
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 Claimant was a recipient of Child Care benefits and signed a Child Care Parent Services Agreement (D-1) on July 9, 2014. The agreement contains a statement indicating that the parent will notify the Agency of provider changes within five days. The agreement also indicates that the Agency will not make payment to the Child Care provider if the parent fails to report the change, and that the parent will bear responsibility for payment.

2) [Name], Supervisor of Family Services for [Name], hereinafter [Name], testified that the Claimant chose [Name] and [Name] as her Child Care providers in July 2014 (see Exhibit D-2).

3) On September 18, 2014, [Name] sent the Claimant a letter (D-3) requesting that she contact the Agency to change Child Care providers because [Name] was no longer an eligible provider. At that time, the letter stipulated that the Claimant was still linked to Ms. [Name] and [Name], and that [Name] had made several attempts to contact the Claimant because she had left a voice mail message a few weeks earlier to request a new provider. The letter states that [Name] was unaware of which new provider the Claimant had chosen, and that she could only be linked to a maximum of two providers at one time.

4) Ms. [Name] testified that the Claimant failed to contact [Name] and her Child Care benefits were closed (see Exhibit D-4) effective October 2, 2014.

5) [Name] received bills from the [Name] After-School Program on October 3, 2014, for care of the Claimant’s child in August and September 2014 (see Exhibit D-5). [Name] responded to the [Name] on October 8, 2014 (D-7), informing the facility that it could not pay for the August/September 2014 Child Care services because the Claimant had no Child Care Certificate for the [Name] during that time period.

6) The Claimant provided a written statement to [Name] on October 15, 2014 (D-8), requesting that the [Name] be designated as one of her Child Care providers. She was reapproved for Child Care benefits on that date (see Exhibit D-9).
7) In an undated letter (D-10), the Claimant contended that she had previously told WVDHHR worker Cynthia Howerton that she wanted to use the [redacted] as her provider, and was told that Ms. Howerton would inform [redacted] of her decision. [redacted] provided an electronic mail transmission from Ms. Howerton dated October 15, 2014 (D-11), which indicates that Ms. Howerton spoke to the Claimant on September 17, 2014, at which time the Claimant told Ms. Howerton that she was using the [redacted] as a Child Care provider. Ms. Howerton stated in the e-mail that she did not recall being asked by the Claimant to provide the information to [redacted] and that if the Claimant had asked her to do so, she would have advised the Claimant to personally contact [redacted].

8) The Claimant testified that she had erred in telling Ms. Howerton about the change in provider instead of [redacted] however, she contended that she was assured by Ms. Howerton that the matter would be taken care of and the changes made. The Claimant stated that she is a single mother, has not familial support, and cannot afford to pay the [redacted] for Child Care services rendered in August and September 2014. While she is currently unemployed, she indicated that the [redacted] would be the only option available to provide care for her daughter if she returns to work.

**APPLICABLE POLICY**

West Virginia Child Care Subsidy Policy & Procedures Manual Section 2.2.3.3.D states that if the parent changes providers during the certificate period, he/she must notify the [redacted] worker in writing within five (5) working days, and request that a Certificate be issued for the new provider. [redacted] staff may ask the previous provider to return the Child Care Certificate to the [redacted] office, but the return is not necessary for the termination of payment to the provider or the continuation of services to the family.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 2.3.4.5 states that it is the parent’s responsibility to ensure that the provider of choice receives a signed Child Care Certificate (DAY-0176) or Provider Notification Letter (DAY-0613) prior to accepting children in care. The certificate or notification letter is the provider’s only assurance of payment.

West Virginia Child Care Subsidy Policy & Procedures Manual Section 2.3.4.11 states that it is the parent’s responsibility to report changes in circumstances— including changes in providers - within five days. Failure to report changes to the Agency may result in case closure, repayment of services used for time not approved, and/or 30-day penalty closure before services can be reopened. Income changes during the six (6)-month period will not impact a parent’s continuing eligibility for care unless the parent requests a redetermination due to decreases in income that might result in reduced fees.
West Virginia Child Care Subsidy Policy & Procedures Manual Section 2.2.2.2 addresses the Child Care Parent Services Agreement (DAY-0162). This section states that the worker should discuss the terms of the Child Care Parent Services Agreement (DAY-0162), which includes information about the parent’s rights and responsibilities to maintain his/her eligibility and to the provider, as well as rules on using care appropriately to prevent improper payments. The parent and [redacted] worker shall sign the agreement, and a copy shall be given to the parent for his/her records.

**DISCUSSION**

Child Care Policy states that if a parent changes providers during the certificate period, he/she must notify the [redacted] worker in writing within five (5) working days, and request that a Certificate be issued for the new provider. It is the parent’s responsibility to ensure that the provider of choice receives a signed Child Care Certificate (DAY-0176) or Provider Notification Letter (DAY-0613) prior to accepting children in care. The certificate or notification letter is the provider’s only assurance of payment. Failure by the parent to report changes within five working days can result in case closure. The Child Care Parent Services Agreement signed by the parent explains the parent’s rights and responsibilities as a recipient of Child Care services.

The Claimant signed a Child Care Parent Services Agreement on July 9, 2014, which explains that she must notify the Agency of provider changes within five days. This form also explains that the Agency will not make payment to the Child Care provider if the parent fails to report the change, and that the parent will bear responsibility for the payment. While the Claimant contacted Cynthia Howerton - an individual who is not employed by [redacted] - on September 17, 2014 and indicated she was using the [redacted] as a Child Care provider, payment requests from the [redacted] reveal that she began using the facility in August 2014 without a Child Care Certificate. Therefore, she failed to comply with policy guidelines and [redacted] acted correctly in terminating her Child Care benefits. As the Certificate was the [redacted] only assurance of payment – and it accepted the Claimant’s child into care without the document - the Department acted within policy guidelines in denying Child Care payments for August and September 2014.

**CONCLUSIONS OF LAW**

The Department acted correctly in terminating the Claimant’s Child Care benefits effective October 2014 and denying payment to the provider for August and September 2014.

**DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Department’s action to terminate Child Care benefits effective October 2014 and deny provider payments for August and September 2014 based on the Claimant’s failure to obtain a Child Care Certificate.
ENTERED this 28th Day of January 2015.

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Pamela L. Hinzman
State Hearing Officer