



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
2699 Park Avenue, Suite 100
Huntington, WV 25704

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 28, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NOS.: 17-BOR-1106; 17-BOR-1223

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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Lela Pemberton, Department Representative

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

██████████,

Appellant,

v.

Action Nos.: 17-BOR-1106; 17-BOR-1223

**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' (WV DHHR) Common Chapters Manual. This fair hearing was convened on February 7, 2017, on appeals filed January 18, 2017 and February 7, 2017.

The matter before the Hearing Officer arises from the January 12, 2017 and January 31, 2017 decisions by the Respondent to deny the Appellant's applications for child care services.

At the hearing, the Respondent appeared by Lela Pemberton and Ashley McDougal. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 First application for Child Care Services, dated December 28, 2016
- D-2 Notification of New Applicants, dated December 28, 2016
- D-3 Two (2) pay stubs from ██████████; Letter from ██████████
- D-4 New Employment Verification form, signed January 12, 2017 by employer
- D-5 Notice of first decision, dated January 12, 2017
- D-6 Second application for Child Care Services, dated January 18, 2017
- D-7 New Employment Verification form, signed January 16, 2017 by employer
- D-8 New Employment Verification form, signed January 19, 2017 by employer
- D-9 Self-Employment Verification forms, dated January 25, 2017; Business Registration Certificate, dated January 24, 2017

- D-10 Emails dated January 30, 2017 and January 31, 2017
- D-11 Income verifications and calculations
- D-12 Child Care Policy, Appendix A
- D-13 Notice of second decision, dated January 31, 2017

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 submitted an application for child care services to the Respondent on December 28, 2016. (Exhibit D-1)
- 2) The application for child care services states that each person who works must provide income verification and outlines the acceptable verifications for regular, ongoing employment, new employment, and self-employment. (Exhibit D-1, page 5 of 7)
- 3) The Respondent notified the Appellant that additional information was needed to determine her eligibility for child care services. (Exhibit D-2)
- 4) The income verification requested to determine eligibility was a “pay stub for each parent from [REDACTED]” and “[Two] current pay stubs from [REDACTED] – both to be “no older than 45 days.” (Exhibit D-2)
- 5) The Respondent advised the Appellant that “the application will be denied if this information is not received by January 10, 2017.” (Exhibit D-2)
- 6) The Appellant did not provide the requested information by the deadline.
- 7) On January 12, 2017, the Respondent notified the Appellant (Exhibit D-5) that her application for child care was denied “because you failed to provide verification of new employment verification form as required by 01/10/2017.”
- 8) On January 18, 2017, the Appellant submitted a second application for child care services. (Exhibit D-6)
- 9) The Respondent notified the Appellant that additional income information was needed to determine her eligibility for child care services. (Exhibit D-8)

- 10) The Appellant verified monthly household income of: \$867 for herself, from [REDACTED] (Exhibit D-7, page 1 of 2, “Yearly Salary” of \$10,400, divided by 12); \$550 for her husband, from [REDACTED] (Exhibit D-7, page 2 of 2); and, \$795.50 for her husband, from [REDACTED] (Exhibit D-3).
- 11) The Appellant additionally reported “housing assistance” of \$1,700 per month on her second application. (Exhibit D-6, page 6 of 7)
- 12) The Appellant’s husband receives a housing allowance from [REDACTED] of \$1,700 per month.
- 13) The Respondent denied the Appellant’s second application on January 31, 2017 (Exhibit D-13), providing the reason for denial as monthly income of “\$3912.00 which exceeds the application income limit of \$2981 for a family of 4.”

APPLICABLE POLICY

Child Care Policy requires applicants to demonstrate a need for care. (Child Care Subsidy Policy, §4.0)

Child Care Policy requires applicants whose need for care is based on employment to verify that employment. (Child Care Subsidy Policy, §4.1.1)

Child Care Policy allows this verification in the form of “one month’s worth of check stubs, no older than 45 days,” (Child Care Subsidy Policy, §4.1.1.1) or with a “New Employment Verification Form (ECE-CC-1B) in the case of new employment situations in which the applicant has not yet received pay,” followed up by “one month’s worth of check stubs to the agency as soon as they are received.” (Child Care Subsidy Policy, §4.1.1.2)

Child Care Policy provides criteria for approval of self-employed applicants which includes a requirement in that activity “a minimum average of 20 hours per week and show an income of at least minimum wage per hour.” (Child Care Subsidy Policy, §4.3.6.2)

Child Care Policy defines non-farm self-employment income as “gross receipts minus allowable expenses” and defines gross receipts as “the **value** of all goods and services rendered.” (Child Care Subsidy Policy, §5.2.2, emphasis added)

Child Care Policy sets the income limit for a new child care applicants with a household size of four as \$2,981. (Child Care Subsidy Policy, Appendix A)

DISCUSSION

The Respondent denied two applications for child care services from the Appellant. The first denial was based on a failure to verify income, and the second denial was based on excessive income. The Respondent must show, by a preponderance of the evidence, that the Appellant was ineligible for child care services for each respective denial reason.

The Respondent required verification of income and hours worked for both applications to determine two eligibility factors: household income under the applicable limit, and work demands sufficient to demonstrate a need for services.

For the first application, the Appellant did not provide the income information needed. The Appellant indicated there was confusion about what income verification was needed and provided verification she believed to be acceptable. Child care policy does not allow for a letter (Exhibit D-3, page 3 of 3) to be substituted for the acceptable income verifications listed, the application document itself outlined acceptable income verifications, and the letter provided by the Appellant is vague with regard to work hours. (“Both persons can work 20 hours or more during the work week.”) The Respondent was correct to deny the Appellant’s first application for failure to verify income.

For the second application, the Respondent clearly showed the Appellant’s household has excessive income for her household size. There was no dispute of household size or income calculations other than the classification of a \$1,700 housing allowance as income. Policy allows for the value of goods and services to be treated as gross receipts, which further means it is included in the calculation of non-farm self-employment income. Including this income, the Appellant’s household income exceeds the limit set by policy. (It should also be noted that if this income could be excluded, the Appellant’s husband would not be meeting the policy requirement of working for at least minimum wage per hour.) The Respondent was correct to deny the Appellant’s second application for excessive household income.

CONCLUSIONS OF LAW

- 1) Because the Appellant failed to verify income for her child care application dated December 28, 2016, the Respondent must deny this application.
- 2) Because child care policy defines gross receipts as part of non-farm self-employment income and as including the value of goods and services received, the Appellant’s “housing allowance” of \$1,700 must be treated as income.
- 3) Because this income must be included, the Respondent must deny the Appellant’s second application for child care services, dated January 18, 2017.

DECISION

It is the decision of the State Hearing Officer to **uphold** the action of the Respondent to deny the Appellant's two applications for child care services.

ENTERED this ____ Day of April 2017.

**Todd Thornton
State Hearing Officer**