



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
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Charleston, West Virginia
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Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

May 23, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1507

Dear Mr. and Mrs. [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,

Natasha Jemerison
State Hearing Officer
Member, State Board of Review

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

cc: Addison Hamilton, Criminal Investigator

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

[REDACTED],

Action Number: 17-BOR-1507

Appellants,

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 [REDACTED]. 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 May 10, 2017, on an appeal filed March 22, 2017.

The matter before the Hearing Officer arises from the March 8, 2017 decision by the Respondent to establish a repayment claim for Child Care benefits.

At the hearing, the Respondent appeared by Addison Hamilton, Investigations and Fraud Management. Appearing as witnesses for the Respondent were [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Appellants appeared *pro se*. Appearing as a witness for the Appellants was [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Child Care Parent Services Agreement, dated September 3, 2010
- D-2 Child Care Certificate, dated September 2010 through February 2011
- D-3 Child Care Certificate, dated March 2011 through August 2011
- D-4 Child Care Certificate, dated September 2011 through February 2012
- D-5 Child Care Certificate, dated March 2012 through August 2012
- D-6 Rights and Responsibilities Signature Page, dated February 23, 2011
- D-7 Rights and Responsibilities Signature Page, dated August 29, 2011
- D-8 Rights and Responsibilities Signature Page, dated February 24, 2012
- D-9 [REDACTED] Attendance Verification

- D-10 [REDACTED] Attendance Records
- D-11 Report of Child Care Overpayment Determination
- D-12 Child Care Subsidy Policy §2.3.4.8, §2.3.5.3, §3.2.4, §3.6.3.1, §4.5.3.3, §6.3, §8.1, §8.3, §8.4.1, and §8.6.1.1

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) The Appellants, [REDACTED] (hereinafter Mr. [REDACTED] and [REDACTED] (hereinafter Mrs. [REDACTED] were recipients of Child Care services.
- 2) The Appellants are married and reside together which makes their home a two-parent household.
- 3) From September 2010 through August 2012, Mr. [REDACTED] reported to [REDACTED] that he was working and/or attending school between six (6) and eight (8) hours per day. (D-2 through D-5)
- 4) From September 2010 through August 2012, Mrs. [REDACTED] reported to [REDACTED] that she was attending school at [REDACTED] on Monday through Thursday for seven (7) hours and on Friday for three-and-a-half (3.5) hours. (D-2 through D-5)
- 5) On March 13, 2012, [REDACTED] notified Investigations and Fraud Management (IFM) that Mrs. [REDACTED] did not attend her activity at [REDACTED] as she had reported. (D-11)
- 6) On July 10, 2013, IFM received attendance verification from [REDACTED] for Mrs. [REDACTED]. The weekly punch report indicated Mrs. [REDACTED] attended [REDACTED] 30 days with a total of 65.31 attendance hours between February 1, 2011 and August 23, 2012. (D-9)
- 7) On March 8, 2017, the Appellants were notified that they received more Child Care benefits than they were entitled. (D-11)
- 8) The Appellants contended that Mrs. [REDACTED] attended [REDACTED] more than what was indicated on the weekly punch report.

APPLICABLE POLICY

Child Care Policy §2.3.4 outlines parent responsibilities and explains the parent must make private arrangements with the provider for payment if care is used for reasons and times not needed or not listed on the certificate. The parent must also report changes in circumstances within five (5) days. Failure to report changes to the agency may result in case closure and repayment of services used for time not approved.

Child Care Policy §2.3.5.3 explains that if intentional misrepresentation occurred and if the estimated amount exceeds \$1,000, the case will be referred to the Director of Investigations and Fraud Management.

Child Care Policy §3.2.4 instructs that if both parents or a step-parent are in the home, Child Care services cannot be approved for work or training related needs unless both parents are working or attending school or training.

Child Care Policy §3.6.3.1 requires that job training participants participate in their qualifying activity to the maximum extent possible as assigned by the job training program or employer. Recipients participating in job training activities less than 20 hours per week will not be eligible for child care services.

Child Care Policy §4.5.3 explains that adults who attend education activities or training must provide documentation of satisfactory progress and attendance. Students can submit statements from the educational or training facility which documents that attendance and progress are satisfactory.

Child Care Policy §8.3.2 explains that misrepresentation occurs when a specific child care policy section is violated as a result of the information not being reported by the client or reported falsely. If CCR&R becomes aware that the client/provider is attempting to or has received services/payments to which they are not entitled, the CCR&R worker must take corrective action.

Child Care Policy §8.3.2.3 instructs that when a parent continues to use Child Care services when the need no longer exists, the case will be closed and no further payment made,

DISCUSSION

On March 8, 2017, the Appellants were notified that they received more Child Care benefits than they were entitled during the period of January 2011 through August 2012, because Mrs. [REDACTED] did not attend her activity at [REDACTED]. The Appellants requested a hearing, because they disagreed with the Department's determination that Mrs. [REDACTED] did not attend her activity.

Child Care policy instructs that if both parents or a step-parent are in the home, Child Care services cannot be approved for work or training related needs unless both parents are working or attending school or training. Job training participants must participate in their qualifying activity to the

maximum extent possible as assigned by the job training program or employer. Recipients participating in job training activities less than 20 hours per week will not be eligible for child care services.

The Appellants testified that Mrs. [REDACTED] attended [REDACTED] on the days and times that were reported to [REDACTED]. They both indicated that the weekly punch report provided to the Department from [REDACTED] was not accurate. Mrs. [REDACTED] stated that there were times when students signed in and out on paper. Mr. [REDACTED] stated that because the period in question was from 2011 through 2012, [REDACTED] informed them that the documents to support their testimony were no longer available and had likely been shredded. Mrs. [REDACTED] stated that she provided a statement from [REDACTED] to [REDACTED] at every Child Care case review that stated she was a full-time student in good standing. Mrs. [REDACTED] added that had she not been attending [REDACTED] full-time, [REDACTED] would have dropped her status to part-time.

The Department's representative, Addison Hamilton, testified that the Appellants reported to [REDACTED] at each review that Mrs. [REDACTED] was attending [REDACTED] 31.5 hours per week, but she attended a total 65.31 hours from 2011 through 2012. Mr. Hamilton stated that when he requested verification of Mrs. [REDACTED] attendance records, [REDACTED] did not indicate that the weekly punch reported was inaccurate or incomplete. Mr. Hamilton added that he informed the Appellants that if they could provide documentation to refute the evidence provided, he would invalidate the repayment.

The Appellants' witness, [REDACTED], provided testimony about [REDACTED] attendance requirement and weekly punch reports. Ms. [REDACTED] stated that it was not uncommon for students to forget to sign in when they attended [REDACTED]. She stated there were times when students used a sign-in sheet, but she had no knowledge of whether Mrs. [REDACTED] used the sign-in sheet or how often. Ms. [REDACTED] testified that [REDACTED] did not have required attendance times or days. She added that those who attended were considered a full-time student no matter how often they attended. Ms. [REDACTED] also stated that students were considered full-time up to six months from their last date of attendance. She added that during the summer, [REDACTED] was closed on Fridays.

Evidence provided indicates Mrs. [REDACTED] did not attend [REDACTED] as often as she reported to [REDACTED]. The testimony provided by the Appellants and their witness was conflicting. Because policy requires both parents to work or attend school at least 20 hours per week, the Department was correct in its decision that the household was not eligible for the Child Care benefits they received.

CONCLUSIONS OF LAW

- 1) Child Care services cannot be approved for work or training related needs unless both parents are working or attending school or training.
- 2) Recipients participating in job training activities less than 20 hours per week will not be eligible for child care services

- 3) Because the Appellants received Child Care services from January 2011 through August 2012, to which they were not entitled, the Department was correct in its decision to establish a repayment against the household.

DECISION

It is the decision of the State Hearing Officer to **uphold** the Department's decision to establish a Child Care repayment claim against the Appellants for the time period of January 2011 through August 2012.

ENTERED this 23rd Day of May 2017.

**Natasha Jemerison
State Hearing Officer**