



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

September 29, 2017



RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2039

Dear Mr. [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: Mike Jackson, Esq., Assistant Attorney General
Lela Pemberton, Department Representative

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2039

**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 August 15, 2017, on an appeal filed June 26, 2017.

The matter before the Hearing Officer arises from the decision by the Respondent to deny the Appellant's November 17, 2016 application for Child Care services.

The initial notice of this decision was issued on November 22, 2016. A hearing in this matter was held (16-BOR-3121) and the case was remanded to the Respondent. This initial decision advised the Respondent that its initial income calculation was in error, and instructed the Respondent to recalculate the income for the Appellant's case and notify her of the outcome of the recalculation.

The Respondent advised the Appellant in two separate notices (dated June 19, 2017, and June 27, 2017) that the decision resulting from the income reevaluation was unfavorable. The Appellant has appealed the June 2017 reevaluation. This decision addresses the June 2017 notices advising the Appellant that, based on the reevaluated income amount, the Appellant remained ineligible for Child Care services due to excessive income.

At the hearing, the Respondent appeared by Mike Jackson, Esq., Assistant Attorney General. Appearing as witnesses for the Respondent were Lela Pemberton and Denise Richmond. The Appellant appeared by her attorney, ██████████, Esq., and testified on her own behalf. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Application for Child Care services, dated November 17, 2016; Income verification for the Appellant
- D-2 Screen print of the Respondent's income calculation for the Appellant
- D-3 Child Care Policy, Appendix D (updated November 2007)
- D-4 Child Care Subsidy Policy, §4.3.8 (updated September 2016)
- D-5 Notice of decision, dated November 22, 2016
- D-6 Duplicate of November 17, 2016 application (D-1) with additional income verification for the Appellant
- D-7 Child Care Policy, Appendix D (updated November 2007), marked with Appellant's proposed income calculation
- D-8 Second screen print of the Respondent's income calculation for the Appellant
- D-9 Notice of decision, dated December 8, 2016
- D-10 Excerpt of Board of Review Order to Remand for Corrected Income Determination for 16-BOR-3121
- D-11 Notice of decision, dated June 19, 2017
- D-12 Notice of decision, dated June 27, 2017
- D-13 Hearing request from Appellant, signed June 22, 2017

Appellant's Exhibits:

- A-1 Appellant's proposed calculation of income
- A-2 Child Care Subsidy Policy, §§5.2 – 5.4 (updated September 2016)

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 applied for Child Care services on November 17, 2016. (Exhibit D-1)
- 2) The Respondent denied the Appellant's application on November 22, 2016, based on a determination that her household income exceeded the limit set by policy. (Exhibit D-5)
- 3) The notice dated November 22, 2016 (Exhibit D-5), listed the Appellant's income as \$3,274.96.
- 4) The Respondent recalculated the Appellant's income based on additional verification (Exhibit D-6) and issued a second denial notification on December 8, 2016. (Exhibit D-9)

- 5) The notice dated December 9, 2016 (Exhibit D-9), listed the Appellant's income as \$2,419.28.
- 6) The Respondent was ordered to recalculate the Appellant's income, reevaluate her eligibility for Child Care services based on that recalculation, and advise the Appellant of the outcome.
- 7) The Respondent issued a June 19, 2017 (Exhibit D-11), notice to the Appellant that there was no change to its previous decision. This notice did not provide an income calculation.
- 8) The Respondent issued a June 27, 2017 (Exhibit D-12), notice to the Appellant showing an income calculation of \$2447.57, and advising the Appellant that this income calculation exceeds the limit for her household size.
- 9) The income limit for the Appellant's household size is \$1,966.
- 10) The Appellant has wages of \$1,128.75. (Exhibit D-8)
- 11) The Appellant owns 10.21918% of [REDACTED]. (Exhibit D-1)
- 12) [REDACTED] had profit of \$1,569. (Exhibit D-1)
- 13) [REDACTED] did not distribute profit to the Appellant.

APPLICABLE POLICY

The policy governing the Child Care program is located in the Child Care Subsidy Policy & Procedures Manual. This policy requires applicants to verify information regarding identity, residency, activity and income (§3.0). The child's family must have "monthly gross income" within the eligibility guidelines in Appendix A of the policy manual (§3.2.1). The income limit for a household size of two is \$1,966 (Appendix A).

Child Care policy defines monthly gross income as "the total amount of money, prior to deductions, received or earned monthly," (§1.2.28; §5.2) and notes that income must be converted to a monthly amount if not already expressed in those terms (§5.2). Child Care policy does not define the term "profit" in the section designated for such definitions (§1.2), or elsewhere in the manual.

Child Care Policy provides sections for the different categories of monthly gross income. These include employment income (§5.2.1), income from non-farm self-employment (§5.2.2), income from farm self-employment (§5.2.3), unearned income (§5.2.4), and types of income not considered (§5.2.5) for eligibility purposes.

Child Care Policy provides a table of self-employment types by type of business, with definitions, required tax forms and instructions for calculating income (§4.3.8). For corporations, these instructions include a note which reads, “Special note: If the client is paid a salary from the Corporation, then the client is not self employed. The salary must be treated as wages, and the distribution of profits from the Corporation should be counted as unearned income.”

DISCUSSION

The Respondent denied the Appellant’s application for Child Care services based on excessive income. The Respondent must show, by a preponderance of the evidence, that the Appellant’s income exceeds the limit set by policy.

The Appellant is employed by a corporation she partly owns. The parties agreed that the Appellant is not self-employed for purposes of Child Care policy. There is no dispute of the amount of wages counted for the Appellant. The disputed issue is the amount of countable income from the Appellant’s partial ownership of [REDACTED].

The Respondent has presented several calculations of income and all appear to rely on the use of revenues as the profit for the business. Because the Appellant is not self-employed, her “distribution of profits from the Corporation” is unearned income. The policy does not provide a definition for “profit” that is unique for its purposes. In general use, revenues and profits are distinct concepts. Profit is defined as “the excess of returns over expenditure in a transaction or series of transactions; *especially*: the excess of the selling price of goods over their cost” (*Merriam-Webster.com, retrieved September 29, 2017*). However, because [REDACTED] did not distribute profits to shareholders, there is no “distribution of profits from the Corporation” to be counted as unearned income for the Appellant.

The Appellant’s wages from employment are clearly under the income limit for her household size, and the Appellant established eligibility from her first application in November 2016.

The Respondent’s decision to deny the Appellant’s Child Care services based on excessive income is incorrect. The Respondent must restore Child Care services to the Appellant by reimbursing the payments that would have been made, had the Appellant’s November 17, 2016 application been approved.

CONCLUSIONS OF LAW

- 1) Because the Appellant is employed by a corporation she partly owns, her salary must be treated as wages and her “distribution of profits from the Corporation” must be treated as unearned income.
- 2) Because the corporation partly owned by the Appellant did not distribute profits, the Appellant has no unearned income.

- 3) Because the Appellant's remaining income from wages is not in dispute and is under the Child Care services income limit for a household her size, the Respondent was in error to deny the Appellant's November 17, 2016 application for Child Care services for excessive income.

DECISION

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to deny the Appellant's November 17, 2016 application for Child Care services. The Respondent must restore benefits to the Appellant retroactively to this application date.

ENTERED this ____ Day of September 2017.

**Todd Thornton
State Hearing Officer**