



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

October 13, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-2102

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: Ashley McDougal, Department Representative

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

██████████,

Appellant,

v.

Action Number: 17-BOR-2102

**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 17, 2017, on an appeal filed July 12, 2017.

The matter before the Hearing Officer arises from the July 10, 2017 decision by the Respondent to terminate the Appellant's Child Care services.

At the hearing, the Respondent appeared by Ashley McDougal. ██████████ was a witness for the Respondent. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Change of Information Notification (form), signed June 7, 2017
- D-2 Child Care Subsidy Policy, §6.5 (excerpt); §4.7 (excerpt)
- D-3 Blank forms (Desk Guide for Exception Requests for Medical Reasons, Medical Verification)
- D-4 Child Care Parent Notification Letter – Notice of Denial or Closure, dated June 12, 2017
- D-5 Provider Notification Letter – Parent's Eligibility for Child Care, dated March 13, 2017
- D-6 Medical Verification form, dated June 14, 2017; Letter from ██████████, dated June 16, 2017; Letter from Ms. ██████████ employer, dated June 15, 2017; Duplicate copy of Desk Guide for Exception Requests for Medical Reasons form
- D-7 E-mail dated July 3, 2017; Data system screen print (illegible)

- D-8 Child Care Parent Notification Letter – Notice of Denial or Closure, dated July 10, 2017
- D-9 Provider Notification Letter – Parent’s Eligibility for Child Care, dated July 10, 2017
- D-10 Child Care Subsidy Policy, §3.6 (excerpt)

Appellant’s Exhibits:

- A-1 Duplicate of documents in Exhibit D-6

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 was a recipient of Child Care services.
- 2) The Appellant notified the Respondent on June 7, 2017, that his wife had a child and was on maternity leave from her employment. (Exhibit D-1)
- 3) The Respondent issued a notice to the Appellant dated June 12, 2017, stating that because of the change in his wife’s employment status the household must provide “verification of your qualified activity” by June 25, 2017, and advising that the Appellant’s Child Care case will be closed if the deadline is not met. (Exhibit D-4)
- 4) The Respondent provided the Appellant with documents to be completed for consideration of a policy waiver for the activity requirement based on medical reasons. (Exhibit D-6)
- 5) The “desk guide” form included with these documents instructs that all families submitting medical exception requests shall be informed that “approval is not guaranteed and that they are responsible for payment arrangements with the child care provider until approval is given.” (Exhibit D-6)
- 6) The physician for the Appellant’s wife completed a medical verification form which was reviewed by the Respondent for consideration of the requested policy waiver. The physician does not provide a discharge plan, and describes the “treatment plan” for the Appellant’s wife as “LINK Child Care of foster child who is 20 months old to provide opportunity for child care of newborn.” (Exhibit D-6)
- 7) The Respondent did not grant the Appellant’s request for a medical waiver of the policy requirement for a qualified activity. (Exhibit D-7)

- 8) The Respondent notified the Appellant on July 10, 2017, that his Child Care case was closed because he “failed to provide verification of an approved activity for [Appellant’s spouse] as required.” (Exhibit D-8)

APPLICABLE POLICY

Child Care Policy requires applicants to demonstrate a need for care. Two-parent households must demonstrate that both parents are involved in a qualified activity that prevents the parents from providing care and supervision of the children in their home. (Child Care Subsidy Policy, §4.0)

Child Care Policy indicates that child care may be approved in certain extraordinary circumstances, including when a parent is recovering after release from extended hospital admissions. (Child Care Subsidy Policy, §4.7.1)

In such circumstances, Child Care Policy requires documentation which includes “a discharge plan and diagnosis and a treatment plan if one is developed to follow up the discharge plan.” (Child Care Subsidy Policy, §4.7.1.1.A)

Child Care Policy outlines the steps for processing a request for an exception to eligibility policy (Child Care Subsidy Policy, §6.5), which include informing the applicants or recipients that approval is not guaranteed (Child Care Subsidy Policy, §6.5.1), collecting the necessary information for the request (Child Care Subsidy Policy, §6.5.1.1), a supervisor review (Child Care Subsidy Policy, §6.5.1.2) and a review and final decision regarding the request from the Respondent’s Division of Early Care and Education. (Child Care Subsidy Policy, §6.5.1.3)

DISCUSSION

The Respondent terminated the Appellant’s Child Care services based on his failure to demonstrate a need for care through a documented, qualified activity, as well as the denied request for a waiver from this policy requirement. The Respondent must show, by a preponderance of the evidence, that this eligibility requirement was not met by the Appellant.

The evidence and testimony in this case clearly shows the Respondent met the burden necessary to affirm its decision. The Appellant reported a change in his wife’s employment status – she gave birth to a child and went on maternity leave from her employer. The Respondent requested verification of a new activity for the household to meet this policy requirement, and provided documents to the Appellant for consideration of a medical exception waiver for the requirement.

The documents provided to the Appellant clearly show that he was advised in writing that the waiver necessary for continued child care services was “not guaranteed.” These documents were completed and returned by the Appellant, and subsequently reviewed by a supervisor and the Division of Early Care and Education. The documents clearly omit a discharge plan for the Appellant’s wife, for her recovery after release from an extended hospitalization. A recommendation from the physician for the Appellant’s wife that she be approved for Child Care

services is not the same as a plan that outlines the specific reasons her recovery would prevent or limit her ability to provide care and supervision of the children in her home. The Respondent's worker should not have verbally advised the Appellant that his policy waiver request would be approved, but the Respondent properly notified the Appellant of the decision in writing.

The Respondent acted correctly to terminate the Appellant's Child Care services based on the unmet requirement for a qualifying activity and a denied request for a waiver of that policy requirement.

CONCLUSIONS OF LAW

- 1) Because the Respondent did not grant the Appellant an exception to the requirement for a qualifying activity, the Appellant is bound by that policy.
- 2) Because the Appellant did not meet the eligibility requirement of a qualifying activity, the Respondent was correct to terminate Child Care services on that basis.

DECISION

It is the decision of the State Hearing Officer to **uphold** the action of the Respondent to terminate the Appellant's Child Care services.

ENTERED this ____ Day of October 2017.

Todd Thornton
State Hearing Officer