



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Earl Ray Tomblin  
Governor

Karen L. Bowling  
Cabinet Secretary

January 19, 2017

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO: 16-BOR-3053

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,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

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

Cc [REDACTED], [REDACTED]

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

██████████,

**Appellant,**

v.

**Action Numbers: 16-BOR- 3053**

**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 12, 2017, on an appeal filed November 21, 2016.

The matter before the Hearing Officer arises from the November 9, 2016 decision by the Respondent to seek repayment of Child Care benefits.

At the hearing, the Respondent appeared by ██████████, Supervisor of Family Services, ██████████, and ██████████, Case Manager, ██████████. The Appellant appeared pro se. Appearing as a witness for the Appellant was ██████████, Appellant's mother. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Hearing Summary and West Virginia Child Care Subsidy Policy & Procedures Manual Sections 3.2.5, 4.10, 7.3.7.1, 7.8 and 7.8.1
- D-2 Child Attendance Analysis Report for June 2016
- D-3 Child Attendance Analysis Report for July 2016
- D-4 Sign-in/sign-out sheet for August 2016
- D-5 Child Attendance Analysis Report for August 2016
- D-6 Request for Payment of Child Care Services for August 2016
- D-7 Sign-in/sign-out sheet for September 2016
- D-8 Electronic sign-in/sign-out sheet for September 2016
- D-9 Child Attendance Analysis Report for September 2016
- D-10 Request for Payment of Child Care Services for 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 was a recipient of Child Care benefits for his daughter.
- 2) The Respondent notified the Appellant on November 9, 2016 that he had received improper Child Care payments for his daughter and would be required to sign a repayment agreement.
- 3) The Respondent asserted that the Appellant - as the recipient of Child Care benefits – was required by policy to personally sign attendance and sign-in/sign-out sheets pertaining to his daughter's care.
- 4) Exhibit D-2, a Child Attendance Analysis Report for June 2016, verifies the child's attendance at the Child Care facility and was signed by [REDACTED], the Appellant's mother.
- 5) Exhibit D-3, a Child Attendance Analysis Report for July 2016, was signed by [REDACTED], the child's mother, with whom the Appellant shares custody. Ms. [REDACTED] is not included in the Appellant's Child Care case.
- 6) Exhibits D-4, D-7 and D-8, sign-in/sign-out sheets for August and September 2016, were signed by Ms. [REDACTED] and the child's grandfather, [REDACTED].
- 7) Exhibits D-6 and D-10 are the Appellant's Requests for Payment of Child Care Services. Comparing the attendance and sign-in/sign-out sheets with the Requests for Payment, the Respondent asserted that the Appellant's Child Care Certificate was used to pay for Ms. [REDACTED] share of the Child Care, which is prohibited by policy.
- 8) The Appellant's daughter was considered school age (over 60 months of age) at the time of the August and September 2016 Child Care billings; therefore, she was not entitled to receive Child Care benefits for a private Pre-K facility.
- 9) The Respondent contended that the total repayment should be split between the provider and the Appellant. The Appellant's share of the repayment is \$598.
- 10) The Appellant testified that for a time he had temporary full custody of his daughter and the child's mother had visitation. He believes the Child Care facility had just allowed the person picking the child up to sign the form. The Appellant stated that he believed the facility was supposed to give the child's mother separate sign-in/sign-out forms. He

stated that he was unaware of the school/age policy, believed that he had done everything correctly, and that the errors were unintentional.

### **APPLICABLE POLICY**

West Virginia Child Care Subsidy Policy & Procedures Manual Section 7.8 states that all Child Care providers are required to maintain sign-in/sign-out forms for all children in care to confirm attendance and justify the days and hours of care for enhanced rates for non-traditional work hours.

Section 7.8.1 of the policy states that the provider shall enter the names of all children in care on the form. Child Care clients shall mark each child's time in and out, designated AM or PM, daily in the box provided. The client's signature on the signature line of the form verifies that the times shown accurately reflect their child's attendance.

Section 3.2.5 states that in cases where parents have joint custody or share custody of their children and both parents are eligible to receive Child Care assistance, the parents shall have separate cases and shall be entered into FACTS as two families. Each parent is responsible for paying the fee on the days the child is in his or her custody.

Section 4.10 states that it is a violation of federal regulations to pay for Child Care during the time that a child could attend public school. However, payments can be made for children who are unable to attend school for short periods of time due to illness or suspension, or children who have been deemed unready for kindergarten. Parents of children who are deemed unready for kindergarten should be encouraged to seek placement in Pre-K if room is available. The parents must provide documentation from the school board that their child has been deemed unready for kindergarten.

Section 8.3.3 states that there are times when it is difficult to discern whether an improper payment occurred due to willful misrepresentation or is simply the result of a client/provider's genuine confusion over subsidy program rules and responsibilities. When the case worker believes that overpayment is the result of the client's failure to understand, it is a programmatic infraction. It is the CCR&R's responsibility to collect improper payments in this instance, regardless of the amount.

### **DISCUSSION**

Child Care Policy states that a Child Care client shall mark each child's time in and out in the box provided on the attendance sheet. The client's signature on the signature line of the form verifies that the times shown accurately reflect their child's attendance. If both parents are eligible to receive Child Care benefits, the parents shall have separate cases and be considered two families. A school-age child (over 60 months of age) may not receive private Pre-K services

unless documentation is provided from the local school board to verify that the child is unready for kindergarten. Repayment must be sought for improper payments based on unintentional programmatic infractions.

The Respondent determined that the Appellant's signature does not appear on all sign-in/sign-out/attendance sheets at his daughter's Child Care facility for June, July, August and September 2016. The Respondent provided verification that the Appellant's Child Care Certificate was used for payment of fees that should have been incurred by the child's mother. In addition, the Respondent concluded that the Appellant owed a partial repayment for the months of August and September 2016 since his daughter was school-aged and could have attended public school at the time.

While it is noted that the Appellant may not have intentionally caused the program infractions, the Respondent is required to collect repayment based on unintentional errors.

### **CONCLUSIONS OF LAW**

The Respondent's proposal to seek repayment of Child Care benefits is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to UPHOLD the Respondent's proposal to seek repayment of Child Care benefits.

**ENTERED this 19<sup>th</sup> Day of January 2017.**

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**Pamela L. Hinzman  
State Hearing Officer**