



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
State Capitol Complex
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Charleston, West Virginia 25305
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**Jolynn Marra
Interim Inspector General**

October 30, 2019

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 19-BOR-2145

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: Kristall Chambers, Department Representative

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

████████████████████,

Appellant,

v.

Action Number: 19-BOR-2145

**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 22, 2019, on an appeal filed August 2, 2019.

The matter before the Hearing Officer arises from the July 16, 2019 decision by the Respondent to terminate the Appellant's Child Care services.

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

EXHIBITS

Department's Exhibits:

- | | |
|-----|---|
| D-1 | New Employment Verification form
Date Received: May 7, 2019 |
| D-2 | Child Care Parent Notification Letter Notice of Denial or Closure
Notice Date: July 16, 2019 |
| D-3 | Employment verification from ██████████
Employment verification from ██████████ |
| D-4 | Child Care Parent Notification Letter Notice of Denial or Closure (with
handwritten notes), dated July 30, 2019 (date printed)
Hearing request form |

- D-5 Client Contact Report
Entry dates: August 1, 2019 – August 7, 2019
- D-6 Hearing Request form, dated August 8, 2019
- D-7 Letter from [REDACTED] ([REDACTED]), dated November 30, 2018
Referral Agreement, signed April 29, 2019
Policy Review Meeting, signed July 25, 2019
- D-8 Emails dated August 13, 2019

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 Appellant was a recipient of Child Care services.
- 2) On May 7, 2019, the Appellant submitted a New Employment Verification form to the Respondent, reporting she was hired for a new job on April 29, 2019. (Exhibit D-1)
- 3) This form (Exhibit D-1) reads, "This form is to verify new employment situations in which the applicant has not yet received pay and is unable to provide pay stubs as proof of employment. **Once the applicant has received one month's worth of pay stubs, copies must be given to the agency.**" (emphasis added)
- 4) On or about July 16, 2019, the Respondent mailed the Appellant a letter to request pay stubs from the employment reported in May 2019. (Exhibit D-2)
- 5) This notice (Exhibit D-2) reads, "Our records indicate that you have been employed with [REDACTED] since 4/29/2019. According to child care policy, **all clients must submit one month's pay stubs clearly showing hours worked, gross income, deductions and net pay after 45 days of employment.** We need all paystubs received by you from this job, to date." (emphasis added)
- 6) This notice (Exhibit D-2) additionally reads, "These paystubs must show an average of at least 20 hours worked per week and meet WV State Min [sic] Wage requirement [sic] or your case will close. We must receive this information by 7/29/2019 or your case will close that day [sic]"

- 7) Subsequent to this request, the Appellant provided employment verification from “[REDACTED]” and [REDACTED]. (Exhibit D-3)
- 8) The Respondent did not have record of recent employment by the Appellant with [REDACTED].
- 9) The Appellant’s employment verification (Exhibit D-3) from “[REDACTED]” met the requirements specified on the Respondent’s July 16, 2019 request (Exhibit D-2) for pay stubs.
- 10) The Appellant’s employment verification (Exhibit D-3) from [REDACTED] provided the Appellant’s net pay, but did not provide hours worked, gross income or deductions.
- 11) Upon discovery of the Appellant’s second job, the Respondent failed to issue a notice requesting details of that employment.
- 12) By notice (Exhibit D-4) issued on or about July 30, 2019, the Respondent advised the Appellant, “You are no longer eligible for child care services because: You failed to submit a month’s pay stubs clearly showing hours worked, gross income, deductions and net pay after 45 days of employment, [sic] The pay stubs that you had submitted does not reflect this.”

APPLICABLE POLICY

Child Care policy reads, “To be eligible for child care assistance, families must demonstrate a need for care. In general, that means that the head of household must be involved in a qualifying activity that prevents the parent from providing care and supervision of the children in the household during the time the parent is participating in the activity.” (Child Care Subsidy Policy, §4.0)

Child Care policy specifies employment in the private or public sector as an activity category (§4.1), and requires verification of this activity either in the form of check stubs (§4.1.1.1) or using “The New Employment Verification Form (ECE-CC-1B) in the case of new employment situations in which the applicant has not yet received pay: Clients using the ECE-CC-1B to verify employment must submit one month’s worth of check stubs to the agency as soon as they are received. Failure to supply follow up check stubs will result in case closure.” (§4.1.1.2)

Child Care policy reads, “Any recipient of child care assistance who is an employee in the private sector must be paid at least West Virginia minimum wage for all hours of work performed. If the recipient is not making at least the applicable West Virginia minimum wage for all work performed, the recipient will not be eligible for child care services...” (§3.5.1)

Child Care policy reads, “To determine the financial eligibility of applicants for or recipients of child care, it is necessary to determine...The amount and source of monthly **gross income** received by all members of the family and calculate the monthly **gross income** for the family.” (§5.0.B) (emphasis added)

DISCUSSION

The Respondent terminated the Appellant’s Child Care services based on the failure to provide necessary verifications. The Respondent must show by a preponderance of the evidence that it properly terminated the Appellant’s Child Care services for failure to provide employment verification which satisfied the Child Care policy requirements regarding the determination of household gross income, a qualifying activity, and compliance with the West Virginia minimum wage.

The Appellant reported a new job on May 7, 2019 (Exhibit D-1). The Respondent requested additional, follow-up information about this job on July 16, 2019 (Exhibit D-2) – after the Appellant had time to obtain and provide the necessary pay verification – and the Appellant complied with this request. However, the Appellant also provided verification of a second job which did not meet the requirements specified on the July 16 notice.

The requirements specified on this notice (Exhibit D-2) are necessary to determine household gross income, hours worked that meet activity requirements, and to confirm that the resulting hourly wage rate is in compliance with the West Virginia minimum wage. The verification provided by the Appellant met those requirements for the first job, but not for the second job. Instead of issuing a new notice requesting details of the second job, the Respondent allowed the Appellant’s Child Care services to terminate based on the fact the verification for the second job did not provide gross pay or hours worked. To properly implement a negative action such as this, the Respondent is required to properly notify that negative action.

However, both the New Employment Verification form (Exhibit D-1) and the July 16 notice (Exhibit D-2) outlined these requirements even as the Respondent was unaware of the Appellant’s second job. In addition to language specific to the Appellant’s first job, the July 16 notice (Exhibit D-2) made the generic statement, “...all clients must submit one month’s pay stubs clearly showing hours worked, gross income, deductions and net pay after 45 days of employment.” The New Employment Verification form (Exhibit D-1) made a similar statement which read, “Once the applicant has received one month’s worth of pay stubs, copies must be given to the agency.” Because the verification requirements for the second job were the same as those for the first, these generic statements meet the Respondent’s notification requirements. The Respondent correctly terminated the Appellant’s Child Care services for the failure to provide verifications necessary for eligibility determination.

During the hearing, the parties addressed issues subsequent to this termination of Child Care services. Because the Appellant had not – at the time of hearing – submitted a new application and the Respondent had not taken any further action on the Appellant’s closed case, these matters were not ripe for appeal.

CONCLUSION OF LAW

Because the Appellant did not provide verifications necessary to determine her eligibility for Child Care services, the Respondent must terminate the Appellant's Child Care services.

DECISION

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

ENTERED this ____ Day of October 2019.

**Todd Thornton
State Hearing Officer**