



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

**Bill J. Crouch
Cabinet Secretary**

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
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**Jolynn Marra
Interim Inspector
General**

February 28, 2019



RE: [REDACTED] v. WVDHHR
ACTION NO.: 18-BOR-2704

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Appellant's Recourse
Form IG-BR-29

cc: Kristall Chambers, CHOICES

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

██████████,

Appellant,

v.

ACTION NO.: 18-BOR-2704

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on January 2, 2019 and reconvened on January 31, 2019 on an appeal filed November 5, 2018.

The matter before the Hearing Officer arises from the September 27, 2019 determination by the Respondent to terminate Child Care Program (CCP) payments for child care and initiate a repayment claim against the Appellant.

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

Department's Exhibits:

- D-1 DHHR Child Care Attendance Sheets
- D-2 DHHR Notice of Denial or Closure, created on September 11, 2018
- D-3 Email Correspondence between the Appellant and the Respondent, dated September 24, 2018
- D-4 DHHR Notice of Denial or Closure, created on September 27, 2018
- D-5 Handwritten Correspondence from the Appellant to the Respondent, undated
- D-6 Email Correspondence between Respondent Staff, dated October 5, 2018
- D-7 Choices Generated Calendar, dated August 2018
- D-8 DHHR Notice Excerpt, created on September 27, 2018
- D-9 DHHR Client Contact Report, dated November 2, 2018

- D-10 Respondent Generated Hearing Summary; Child Care Parent Notification Letter, created on September 27, 2019
- D-11 DHHR Application for Child Care Services, signed November 2, 2018

Appellant's Exhibits:

- A-1 Appellant's [REDACTED] August 2018 Schedule

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Child Care Program (CCP) provides financial assistance to parent recipients to cover the cost of child care.
- 2) The Appellant was recipient of CCP benefits as managed by Choices, a Child Care Resource and Referral Agency (CCR&R.)
- 3) On November 2, 2018, the Appellant completed an application for CCP benefits and signed that she agreed to report "any change within 5 working days which would affect my eligibility for child care services" (Exhibit D-11).
- 4) The application acknowledgement was not specific regarding what changes would affect the Appellant's eligibility for child care services (Exhibit D-11).
- 5) The Respondent conducted an audit of the Appellant's use of child care services during August 2018 (Exhibit D-10).
- 6) On September 11, 2018, the Respondent issued a notice to the Appellant requesting that verification be submitted to the Respondent by September 24, 2018 or her child care benefits would be terminated on that date (Exhibit D-2).
- 7) The September 11, 2018 notice advised that the Appellant "must submit one of the following: 1. Verification of Actual Work Schedules for BOTH jobs – A copy of your official time cards, clearly showing the days and times you worked during the month of August 2018 or an official printout on company letterhead clearly showing the days and times you worked during the month of August 2018" (Exhibit D-2).
- 8) The September 11, 2018 notice did not reflect that the client would be responsible for payment to the provider if verifications were not received (Exhibit D-2).
- 9) The September 11, 2018 notice did not provide a reminder to the Appellant of her responsibility to report changes in a work activity to avoid thirty-day penalty closures for failure to comply with program requirements (Exhibit D-2).

- 10) The Respondent's hearing summary reflected that Child Care Subsidy Policy & Procedures Manual (CCSP) §§ 8.7.1, 8.7.2.1, and 8.2.1 were the relevant policy sections supporting the Respondent's actions (Exhibit D-10).
- 11) On September 24, 2018, the Appellant emailed the Respondent copies of her [REDACTED] and [REDACTED] schedules for the month of August 2018 (Exhibits D-3 and A-1).
- 12) On September 27, 2018, the Respondent issued a notice advising the Appellant that she was no longer eligible for child care services and that the last date she would receive child care payment assistance would be September 24, 2018 (Exhibit D-4).
- 13) The September 27, 2018 notice advised that child care services would be terminated due to the Appellant's failure to submit "verification of Actual Work Schedule for BOTH Jobs which were either a copy of your official time cards, clearly showing the days and times you worked during the month of August 2018, or an official printout on company letterhead clearly showing the days and times you worked during the month of August 2018." (Exhibit D-4)
- 14) The September 27, 2018 notice reflected that the Appellant had submitted "generic employee schedules, which don't reflect actual hours worked nor schedule changes that led to extra days" (Exhibit D-4).
- 15) The September 27, 2018 notice asserted that the Appellant's schedules reflected that child care had been used "5 days where you were not scheduled to work at either job" and advised that a repayment for agreement for \$210 would need to be signed before the Appellant's case could be reopened (Exhibit D-4).
- 16) The September 27, 2018 notice did not list specific dates for which child care was used when the Appellant was not verified to be working or the calculations the Respondent used to determine the amount of repayment (Exhibit D-4).
- 17) Neither the September 11 nor September 27, 2018 notices cited specific regulations or policy sections to support the proposed actions (Exhibits D-2 and D-4).
- 18) The Respondent generated a calendar for August 2018 that reflected the Appellant owed repayment for child care used on August 4, 5, 11, 12, 25, and 26, 2018 (Exhibit D-3).
- 19) The Respondent's evidence representing the Appellant's schedules did not include the full [REDACTED] schedule information submitted to the Respondent by the Appellant (Exhibit D-3).
- 20) The [REDACTED] schedule submitted as evidence by the Respondent did not reflect a month name and was only legible through the 28th day (Exhibit D-3)
- 21) The Appellant was not scheduled to work at [REDACTED] on August 1, 7, 8, 9, 14, 15, 21, 22, 28, 29, 2019 (Exhibit A-1).

- 22) The Appellant was not scheduled to work at [REDACTED] on August 4, 5, 14, 15, 20, 25, or 26, 2018 (Exhibit D-3).
- 23) The Appellant did not receive child care on August 14, 15, or 31, 2018 (Exhibit D-1).
- 24) During the hearing, the Respondent testified that repayment would not be sought against the Appellant for child care service payments made in August 2018.
- 25) The Appellant had no previous history of failure to meet her program responsibilities.

APPLICABLE POLICY

45 CFR §205.10(i)(B) provides in part:

Public Welfare Family Assistance Programs are required to provide adequate written notice which includes a statement of what action the agency intends to take, the reason for the intended agency action, the specific regulations supporting such action, and an explanation of the individual's right to request a state agency hearing.

Child Care Subsidy Policy & Procedures Manual (CCSP) §1.2.7 provides in part:

Child Care Resource and Referral Agency (CCR&R) is an agency under contract with the DHHR to maintain provider resources, provide consumer education, manage the child care subsidy program.

CCSP §§6.1.2.2-6.1.2.4 provides in part:

A Day-0613 Provider Notification Letter shall be sent by the CCR&R worker to the child care provider notifying the provider of a CCP parent closure or if the family is determined to be ineligible for child care services.

CCSP §6.6 provides in part:

Any notification of negative action must be in writing on the Parent Notification Letter, including termination of services. The form letter shall include [emphasis added] the specific negative action, with citation of specific policy [emphasis added] and description of any action on behalf of the client that resulted in the negative action. Most negative actions affecting the recipients of child care cannot be taken until 13 calendar days after the client has been notified [emphasis added].

CCSP §8.1 provides in part:

It is the responsibility of every CCR&R employee to minimize the opportunity for improper payments by performing his duties as outlined in this Child Care Policy

Manual. The primary burden for prevention of misrepresentation rests on the CCR&R case manager

Clients can be expected to give information only in relation to their understanding of program requirements [emphasis added]. Case managers should ensure that clients fully understand their rights and responsibilities as subsidy program participants and that this be documented in the FACTS record.

CCSP §8.2-8.2.8 provides in part:

Strategies developed to prevent and reduce errors and improper payments include the following:

CCR&R agencies must use state developed child care policy and procedure.

CCR&R agencies must audit billing forms and compare work schedules to times shown on the sign in and out form to verify child care usage complies with time approved [emphasis added].

Subsidy clients must submit verifications for activities and income. Employed clients must submit paystubs for one month's period and work schedules.

CCR&R workers can implement a thirty-day penalty closure for clients who violate subsidy policy rules and responsibilities. If a parent fails to fulfill these responsibilities, the worker shall give a written warning regarding specific problems, noting that subsequent abuses may result in a 30-day penalty closure.

CCSP §8.7.2.1 provides in part:

If the majority of the time billed matches the client's reported activity schedule and authorizing the payment at this time will not interfere with the 13-20 day monthly payment calculation, the worker should: ...

C. Send a 13-day notice to the client requesting verifications that support the need for care on the additional days and advising the client that if such verifications are not received, that the client will be responsible for payment to the provider. The client should also be reminded at this time of the responsibility to report changes in activity schedules as soon as possible to avoid payment delays for their provider and to avoid possible thirty-day penalty closures for failure to comply with the program requirements. [emphasis added]

D. If the client provides documentation of eligible activity participation for the excess days within the allotted time frame, the worker should authorize and process the additional payment. The case manager should also document the additional payment in the client's FACTS contact screen.

CCSP §8.7.2.3 provides in part:

Clients who fail to notify staff of changes in activity schedules *after previously* being notified of their responsibility to do so shall be given a thirty-day penalty closure for each offense after the second warning. [emphasis added]

DISCUSSION

The Appellant's CCP case was closed on September 24, 2018. The Appellant argued that she did not receive child care payments for care provided on days in which she was not working. The Appellant argued that she submitted verification to the Respondent that she had worked the days child care was provided and therefore should not owe repayment or have had her CCP case closed.

The Respondent had to prove by a preponderance of evidence that the Appellant's CCP case was correctly terminated effective September 24, 2018, and that the Appellant had received adequate notice of adverse action. The Respondent argued that the Appellant's case was terminated because she did not submit verification as requested on the notice issued September 11, 2018. The Respondent's hearing summary reflected that Child Care Subsidy Policy & Procedures Manual (CCSP) §§ 8.7.1, 8.7.2.1, and 8.2.1 were the relevant policy sections supporting the Respondent's actions.

Repayment

Although the Respondent generated a calendar reflecting that the Appellant owed repayment for child care used on six days in August 2018, the September 27, 2018 notice reflected that the Appellant owed child care repayment for five days and the dates were not specified on the notice. The Respondent testified that based on the Appellant's scheduled work days reflected on the [REDACTED] and [REDACTED] schedules, the Respondent would not be seeking repayment for child care payments made for child care provided on days that corresponded with the Appellant's scheduled work days. The Appellant testified that due to the Respondent's concession, she no longer requested the Board of Review to make a determination regarding repayment of child care payments made on her behalf for care provided in August 2018. As the parties agree that the repayment issue has been resolved, there is no further relief that can be granted by the Board of Review and the issue of repayment is moot.

Closure

Audit

The Respondent testified that the audit was conducted due to the Appellant using child care in August 2018 for 2 days over the amount permitted on her certificate. No evidence was entered to demonstrate what activity schedule had initially been established for the Appellant's child care services. The certificate was not entered as evidence to corroborate the use of additional days of child care services. Only child care attendance sheets were submitted and no evidence was entered to reflect that child care payments had been made for the month of August 2018. Because no evidence was presented to prove that child care had been provided beyond the amount allowed on

the Appellant's child care certificate, the justification for requesting verification of the Appellant's work hours was not established.

Verification

The Respondent argued that verification of the Appellant's work activity was required to corroborate the change in her work schedule since certification and to affirm that child care provided in August 2018 was required. Policy provides that the client has a responsibility to report changes in activity schedules; however, pursuant to policy, clients can be expected to give information only in relation to their understanding of program requirements. Policy provides that CCR&R case managers are responsible for ensuring that clients understand their program rights and responsibilities. The Respondent's evidence demonstrated that the Appellant had signed that she understood her responsibility to report changes that would affect her child care eligibility within 5 days; however, the application acknowledgement was not specific regarding what changes would affect the Appellant's eligibility for child care services. Policy requires for the Appellant to be advised of program rights and responsibilities and that this be documented in the FACTS record, however, no evidence was entered to demonstrate that the Appellant was made aware of her responsibilities regarding changes required to be reported. Pursuant to policy, a thirty-day penalty closure may be implemented for offenses after the second warning to the client to notify staff of changes in activity schedules. The Respondent failed to prove that the Appellant was aware of her responsibility to notify the Respondent of changes in her activity schedule, that changes in her activity schedule had occurred, or that the second warning threshold had been met prior to issuance of a child care payment closure notice.

The Respondent argued that the Appellant did not submit copies of her time cards as requested on the September 11, 2018 verification request, therefore, justification for case closure was established. The September 11, 2018 notice required the Appellant to submit "time cards or an official printout on company letterhead clearly showing the days and times [she] worked." The consideration given to the Appellant's work schedules by the Respondent was inconsistent between the contested issues. Although the Respondent accepted the Appellant's schedules as verification of work activity to resolve the issue of repayment, the Respondent refused to accept the Appellant's schedules as verifications for days worked for the issue of case closure due to non-receipt of requested verification.

The evidence submitted by the Respondent reflecting the Appellant's [REDACTED] schedule revealed a cut-off print-out of an email sent to the Respondent by the Appellant. As both parties agreed that the schedule was cut-off and did not contain the full information submitted to the Respondent by the Appellant, the Respondent's evidence regarding the Appellant's schedule was insufficient and was given little weight in the decision of this Hearing Officer. The Appellant's evidence reflected her full [REDACTED] work schedule for the August 2018 period. Although the [REDACTED] scheduled submitted as evidence by the Respondent did not reflect a particular month, it was not contested by either party that the evidence reflected the Appellant's scheduled work days for the month of August 2018. Although the [REDACTED] schedule did not reflect the company's letterhead, it was not contested that the schedule was obtained from [REDACTED], nor did the parties contest that the Appellant worked on the days indicated on the [REDACTED] schedule.

The Respondent argued by written hearing summary and by testimony, that the Appellant's submitted schedules did not meet the threshold requirement of "clearly showing the days and times" she worked during the month of August 2018. Policy does not define "clearly showing" terminology or specify that "time cards or an official printout on company letterhead demonstrating the days and times" worked are the verification requirement threshold that must be met. Policy requires audits to include comparison of work schedules to times on the sign in/out forms to verify that child care usage complies with the time approved. Policy further clarifies that subsidy clients must submit pay stubs and work schedules [emphasis added]. Further, no evidence was entered to demonstrate that child care was provided for days exceeding days for which the Appellant was approved. The Respondent acted incorrectly to require the Appellant to submit time cards or an official printout on company letterhead and therefore, acted incorrectly when closing the Appellant's CCP case for failure to submit this information.

Notice

The September 11, 2018 verification request letter did not meet policy requirements regarding content. Pursuant to policy, the verification request must advise the Appellant that if the verifications requested were not received that she would be responsible for payment to the provider. Policy provides that at the time of the verification request, the Appellant should be reminded of her responsibility to report changes in activity schedules to avoid possible thirty-day penalty closures for failure to comply with program requirements; however, the notice did not reflect this required information.

The September 27, 2018 termination notice did not meet policy requirements for notice of adverse action regarding notice content or advanced notice. Policy requires adverse action notices to contain citation of specific policy supporting the action; however, neither the September 11 or September 27, 2018 notices cited specific regulations or policy sections to support the proposed actions. Policy requires the notice to reflect the specific negative action. The September 27, 2018 notice reflected a repayment claim for 5 days of child care usage requiring repayment but did not clarify which days care was provided. The Respondent's testimony and evidence was inconsistent with the number of days listed on the notice for which repayment was being sought. Pursuant to policy, the closure notice should have been issued 13 calendar days prior to a negative action affecting a recipient of child care. The Respondent's effective date of adverse action was September 24, 2018, which is three days prior to the issuance of the September 27, 2018 closure notice. The Respondent disregarded federal regulations and the Respondent's own policy concerning proper notice when issuing the September 27, 2018 notice to the Appellant.

Conclusion

Due to the Respondent's inconsistency in applying the Appellant's submitted schedule and the glaring inconsistency of follow-through with policy requirements regarding notice, verification, and case closure procedures, the Respondent's testimony and evidence were not found to be credible by this Hearing Official. The Respondent failed to prove by a preponderance of evidence that the Appellant's CCP case was correctly terminated effective September 24, 2018 or that the Appellant had received adequate notice advising that her CCP case would be closed.

CONCLUSIONS OF LAW

- 1) The issue of the implementation of a repayment claim against the Appellant for child care payments made for care provided in August 2018 was resolved prior to the reconvened hearing.
- 2) Policy provides that CCR&R agencies must audit billing forms and compare work schedules to times shown on the sign in and out form to verify that child care usage complies with time approved.
- 3) Policy requires subsidy clients to submit activity verifications including work schedules.
- 4) The Respondent incorrectly required the Appellant to submit time cards or an official printout on company letterhead demonstrating the days and times the Appellant worked in August 2018.
- 5) The Appellant submitted her August 2018 work schedules to the Respondent on September 24, 2018.
- 6) The Respondent incorrectly refused to consider the Appellant's work schedules as verification and acted incorrectly when closing the Appellant's CCP case due to the Appellant's failure to submit time cards or an official printout on company letterhead.
- 7) Policy provides that when billed child care exceeds the client's reported activity schedule, the Respondent may send a 13-day notice to the client requesting verification that supports the need for care on the additional days and advising the client that if such verifications are not received, that the client will be responsible for payment to the provider.
- 8) Policy provides that at the time of verification request, the client should be reminded of their responsibility to report changes in activity schedules to avoid possible thirty-day penalty closures for failure to comply with the program requirements.
- 9) The evidence failed to demonstrate that the billed child care for August 2018 exceeded the Appellant's activity schedule.
- 10) The Respondent's September 11, 2018 verification request did not contain the components required by policy and was insufficient.
- 11) Policy provides that when a client fails to notify staff of changes in activity schedules after being previously notified of their responsibility to do so, a thirty-day penalty closure for each offense after the second warning may be applied.
- 12) The evidence failed to demonstrate that the Appellant had been notified of her responsibility to notify staff of changes in her activity schedule.

- 13) The evidence failed to demonstrate that the Respondent followed procedure to implement a thirty-day penalty closure prior to termination of the Appellant's CCP case.
- 14) Prior to terminating the Appellant's CCP child care payments, the Respondent was required to issue a 13-day advanced notice to the Appellant advising her of the action proposed to be taken, the reason for the action, citation of relevant regulations or policy sections which support the proposed action, and of her right to request a state agency hearing.
- 15) The September 27, 2018 notice was issued three days after the effective date of proposed action.
- 16) The evidence failed to demonstrate that the Respondent issued adequate notice advising the Appellant that her CCP case would be closed.
- 17) The Respondent's action to terminate the Appellant's CCP case, effective September 24, 2018, was incorrect.
- 18) Policy provides that CCR&R agencies must use state developed child care policy and procedure.
- 19) The Respondent failed to demonstrate by a preponderance of evidence that the CCR&R agency followed state developed child care policy and procedure when requesting verification, issuing notices, and following case closure procedures to determine that the Appellant's CCP case should be closed effective September 24, 2018.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to close the Appellant's CCP case, effective September 24, 2018. It is hereby **ORDERED** that if a lapse in child care payments occurred as a result of the September 24, 2018 closure, that benefits be reinstated and made retroactive to the date of closure.

ENTERED this 28th day of February 2019.

Tara B. Thompson
State Hearing Officer