



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector General

September 8, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-1816

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, MLS
State Hearing Officer
State Board of Review

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

CC: Kalie Perdue, Child Care Resource Center
Brittany Lucci, Child Care Resource Center

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-1816

**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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 24, 2021 on an appeal filed with the Board of Review on July 23, 2021.

The matter before the Hearing Officer arises from the Respondent's July 12, 2021 decision to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by Kalie Perdue, Child Care Resource Center. Appearing as a witness on behalf of the Respondent was Denise Richmond, DHHR Division of Early Care and Education. The Appellant appeared *pro se*. All witnesses were sworn in and the following exhibits were entered as evidence.

Department's Exhibits:

- D-1 Choices Child Care Resource & Referral Authorization to Release Information, signed July 14, 2020, and Guidelines for Using Child Care, signed July 15, 2020
- D-2 DHHR Application for Child Care Services, signed July 15, 2020
- D-3 DHHR Notification of New Applicants, dated July 22, 2020
- D-4 Respondent's Email Correspondence, dated July 22, 2020
- D-5 ██████████ Paystubs, dated June 9 and June 24, 2020
- D-6 ██████████ Paystubs, dated July 3 and July 17, 2020
- D-7 Income Calculator
- D-8 DHHR Notification of New Applicants, dated July 24, 2020; Provider Notification Letter, dated July 24, 2020
- D-9 DHHR Child Care Parent Notification of Redetermination, dated June 24, 2021

- D-10 Child Care Parent Notification Letter Notice of Denial, dated July 12, 2021
- D-11 Provider Notification Letter, dated July 12, 2021
- D-12 Child Care Parent Services Agreement, signed July 22, 2020
- D-13 DHHR Child Care Certificate, issued July 24, 2020
- D-14 Appellant's Driver's License
- D-15 Child [REDACTED] Birth Certificate
- D-16 West Virginia Child Care Subsidy Policy & Procedures Manual §§ 4.3.6-4.3.6.2
- D-17 Client Contact Report, dated July 24, 2020 through July 23, 2021

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Appellant applied and was approved for Child Care Services because of [REDACTED] (Mr. [REDACTED]) status as an essential worker employed with [REDACTED] during the ongoing COVID-19 pandemic (Exhibits D-2, D-4, D-6, D-8, and D-17).
- 2) On July 12, 2021, the Respondent issued a DAY-0179 Child Care Parent Notification Letter Notice of Denial advising the Appellant that the Appellant's child care case would "be closed on this date" because Mr. [REDACTED] did not receive income for June or July 2021 (Exhibit D-10).
- 3) The July 12, 2021 notice did not reflect any policy citations supporting the action taken or proposed (Exhibit D-10).
- 4) Mr. [REDACTED] ceased his employment with [REDACTED] in June 2021.
- 5) Mr. [REDACTED] was self-employed in July 2021.
- 6) The Respondent terminated the Appellant's child care case effective July 8, 2021 (Exhibit D-11).
- 7) On July 15 and July 22, 2020, the Appellant signed that she understood her responsibility to report within five (5) days of a change in job, school, or work schedule (Exhibits D-1, D-2, and D-12).

APPLICABLE POLICY

West Virginia Child Care Subsidy Policy and Procedures Manual (WVCCSPP) §§ 1.1.30 and 1.1.48 provide in part:

Self-employed individuals must meet West Virginia minimum wage requirements in order to be eligible for child care assistance.

Working means receiving non-subsidized wage or salary for the work performed.

WVCCSPP §§ 3.5.1.1 and 3.5.2 provide in part:

Self-employed child care recipients must make at least the current West Virginia minimum wage for each hour of work performed, to be eligible for child care services. The West Virginia minimum wage is \$8.75 per hour.

WVCCSPP §§ 4.0 and 4.3.6-4.3.6.2 provide in part:

To be eligible for child care assistance, both parents in the home must be involved in a qualifying activity. Child care may be approved for parents who are self-employed if the family depends upon the self-employment activity for their livelihood, and the time and effort put into the activity indicate intent to make a profit. Passive or casual activities do not meet this criteria. Parents must participate in self-employment activity a minimum average of 20 hours per week and show an income of at least minimum wage per hour.

WVCCSPP § 6.6 provides in part:

Any notification of negative action must be in writing on the Parent Notification Letter (Day-0177 or Day-0179) The form letter shall include the specific negative action, with citation of specific policy and a description of any action, if applicable, on behalf of the client that resulted in the negative action. Negative actions affecting the recipients of child care, other than the denial of an application cannot be taken until 13 calendar days after the client has been notified.

WVCCSPP §§ 11.2-11.2.1.3 provide in part:

Adequate notice of a decision affecting benefits shall be mailed or provided in writing in a face to face contact. Notices shall be mailed at least thirteen (13) days before the effective date of any action or decision which may be adverse to the client. The notice must include:

- The action or proposed action to be taken
- The reason for the action provided in terms readily understandable by the applicant
- Citation of relevant policy sections supporting the action or proposed action.

West Virginia Common Chapters (WVCC) §§ 719.11.A and 710.12 provide in part:

Adverse action is defined as a change occurring in a recipient's case that results in a reduction or termination of public assistance. In computing any period of time prescribed within this rule, the day of the act from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday in which case the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

WVCC § 710.12 provides in part:

A case under appeal may be remanded for further action if the Hearing Official determines at the hearing that the Respondent failed to adequately evaluate the matter at hand. A case may be reversed and remanded. Any subsequent action resulting from the remand shall be subject to appeal by the Appellant.

DISCUSSION

The Respondent terminated the Appellant's child care case, effective July 8, 2021, because Mr. [REDACTED] was no longer earning income. The Appellant contested the Respondent's action and claimed that Mr. [REDACTED] was setting up his business in July 2021.

The Respondent bears the burden of proof. The Respondent's notice of adverse action stipulated that the Appellant's child care case was being terminated because Mr. [REDACTED] did not receive income for June or July 2021. The notice further reflected that, "self-employed individuals [must] show working at least 20 hours/week and making at least the state minimum wage of \$8.75/hour." The Respondent had to prove by a preponderance of evidence that Mr. [REDACTED] did not receive income for June or July 2021 and that he was not participating in a self-employment activity with a minimum average of 20 hours per week and earning an income of at least minimum wage per hour. Further, the Respondent had to prove that the Appellant received proper advance notice of adverse action prior to terminating the Appellant's child care case.

The Respondent testified that child care services income eligibility limits for essential workers

were waived and the Appellant was approved for child care services because of Mr. [REDACTED] status as an essential worker employed at [REDACTED]. To be eligible for the child care subsidy, self-employed parents must participate in self-employment activity a minimum average of 20 hours per week and earn an income of at least minimum wage per hour.

The Appellant was required to report changes in Mr. [REDACTED] employment within five days of his change of employment. The Respondent's Client Contact Report indicated that on July 8, 2021, the Appellant reported that Mr. [REDACTED] had ceased his employment with [REDACTED] in June 2021 to open his own chiropractic business and would not be seeing patients until August 1, 2021. During the hearing, the Appellant testified that Mr. [REDACTED] was simultaneously setting up his own business and working at [REDACTED] until, "late June." The Respondent testified that because the Appellant reported the change in Mr. [REDACTED] employment, the Appellant was not requested to verify when Mr. [REDACTED] ceased his employment at [REDACTED] or to verify when he became non-compliant with the self-employment regulatory requirements. The Respondent testified that the Appellant's child care case closure was based on her July 8, 2021 reported change.

The evidence did not establish the date that Mr. [REDACTED] ceased employment with [REDACTED]. Further, no evidence was entered to establish the date that Mr. [REDACTED] became non-compliant with the regulatory 20-hour self-employment work and minimum wage income requirements. Although the Appellant's testimony affirmed that Mr. [REDACTED] did not earn self-employment income in July 2021, the evidence failed to establish that Mr. [REDACTED] also did not earn income in June 2021 –as reflected in the notice of adverse action.

Notice

The Respondent testified that the action to terminate the Appellant's child care services was effective on July 8, 2021 —the day the Appellant reported Mr. [REDACTED] employment change to the Respondent. The Respondent's July 12, 2021 Client Contact Report note reflected that the Appellant had reported Mr. [REDACTED] employment change on July 8, 2021. Although the Respondent did not create a note on July 8, 2021, the Appellant did not contest that July 8, 2021 was the date that she advised the Respondent of Mr. [REDACTED] employment change.

The Respondent testified that procedurally, the Respondent is permitted a certain number of days between the Appellant's change report and the date a notice of adverse action must be issued. The Respondent did not introduce any regulation that stipulated that a notice of adverse action may be issued beyond the procedures permitted in policy.

The Respondent's decision to close the Appellant's child care case is an adverse action, as defined by West Virginia Common Chapters. The Respondent's policy specifies that adverse actions require issuance of the DAY-0179 form –which must include the proposed action to be taken, the reason for the action provided in terms readily understandable by the applicant, and the citation of

relevant policy sections supporting the adverse action. The evidence verified that the Respondent's notice failed to meet these requirements and subsequently prejudiced the Appellant's right to due process because child care services were terminated prior to the issuance of adequate notice of adverse action.

CONCLUSIONS OF LAW

- 1) To be eligible for the child care subsidy, self-employed parents must participate in self-employment activity a minimum average of 20 hours per week and earn an income of at least minimum wage per hour.
- 2) The preponderance of evidence failed to prove that the Appellant did not receive income for June 2021.
- 3) The preponderance of evidence established that the Appellant did not receive self-employment income for July 2021.
- 4) The Respondent may take adverse action to close the Appellant's child care case thirteen (13) calendar days after the client has been issued adequate notice. The notice must include the proposed action to be taken, the reason for the action provided in terms readily understandable by the applicant, and the citation of relevant policy sections supporting the adverse action.
- 5) The evidence failed to establish that the Respondent provided adequate advance notice of adverse action.
- 6) The Respondent incorrectly terminated the Appellant's child care payments, effective July 8, 2021.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's action to terminate the Appellant's child care services, effective July 8, 2021. The matter is **REMANDED** for issuance of adequate advance notice of adverse action. It is **ORDERED** that any benefits lost, effective July 8, 2021, shall be restored until proper notice is issued.

Any further notices are subject to appeal through the Board of Review.

ENTERED this 8th day of September 2021.

Tara B. Thompson, MLS
State Hearing Officer