



**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
Building 6, Room 817-B
Charleston, West Virginia 25305
Telephone: (304) 558-2278 Fax: (304) 558-1992**

**Jolynn Marra
Interim Inspector General**

October 12, 2021

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 21-BOR-1933

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,

Angela D. Signore
State Hearing Officer
State Board of Review

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

cc: Teauna Bennett, Connect Child Care Resource and Referral

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

██████████,

Appellant,

v.

ACTION NO.: 21-BOR-1933

**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 September 16, 2021, on an appeal filed August 13, 2021.

The matter before the Hearing Officer arises from the August 3, 2021 determination by the Respondent to terminate the Appellant's Child Care benefits.

At the hearing, the Respondent appeared by Teauna Bennett, Assistant Director, Connect Child Care Resource & Referral. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 WV DHHR Child Care Parent Notification of Redetermination Letter, dated July 01, 2021
- D-2 WV DHHR Essential Child Care Review Packet completed by ██████████, dated July 08, 2021; Illegible Copy of WV Driver's License and Social Security Card; Summit Financial Group Direct Deposit Pay for ██████████; Illegible Copy of WV Driver's License; and State Street Retirement Direct Deposit Retirement Pay for ██████████
- D-3 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated July 08, 2021
- D-4 Duplicate of D-1; WV DHHR Essential Child Care Assistance Status Check Notification, dated July 01, 2021; Duplicate of D-3; Duplicate of D-2; and Notice of Retirement signed by ██████████, dated March 19, 2021

- D-5 WV DHHR Child Care Subsidy Policy, September 1, 2020
- D-6 WV DHHR Child Care Parent Notification of Denial or Closure Letter, dated August 03, 2021
- D-7 WV DHHR Request for Hearing Conference and Letter of Medical Circumstances signed by [REDACTED], dated August 13, 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) Enhanced funding provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act stipulated that income limits could be waived for subsidized Child Care services for essential workers during the healthcare crisis.
- 2) The Appellant and her spouse, [REDACTED], met the definition of essential workers and were not required to meet an income limit to receive subsidized Child Care services managed by Connect, a Child Care Resource and Referral Agency (CCR&R.)
- 3) To be eligible for Child Care Program benefits, both parents in the household must participate in a qualifying activity or be eligible for a policy exception. (Exhibits D-3, D-4, and D-5)
- 4) The Appellant's spouse, [REDACTED], retired from employment at [REDACTED] on April 02, 2021. (Exhibits D2 and D-3)
- 5) On July 01, 2021, the Respondent issued a Child Care Parent Notification of Redetermination Letter. The notification indicated that the included redetermination packet must be completed and returned to the Respondent by July 15, 2021, or Child Care Program benefits would be terminated effective July 31, 2021. (Exhibits D-1, D-2, and D-4)
- 6) On July 08, 2021, the Appellant submitted the completed redetermination for Child Care Program benefits packet to the Respondent via facsimile. (Exhibit D-2)
- 7) On July 08, 2021, the Respondent issued an additional notice requesting further verification of employment status for [REDACTED] be submitted by July 31, 2021, or Child Care Program benefits would be terminated on that date. (Exhibits D-3 and D-4)
- 8) On August 03, 2021, the Respondent issued a notice advising the Appellant she was no longer eligible for child care services due to "failed to provide verification of activity for

■ as required.” The notice further advised the last date the Appellant would receive child care payment assistance would be July 31, 2021. (Exhibit D-6)

- 9) The Appellant failed to report a change in circumstances within the five (5) day time frame as established by policy.
- 10) The Appellant failed to submit a request for an illness/disability exception to the policy requirement that both parents in the household participate in a qualifying activity in order to be eligible for child care services.

APPLICABLE POLICY

CARES Act, Public Law 116-136, March 27, 2020 reads, in part:

To provide funding for Child Care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials, without regard to the income eligibility requirements.

West Virginia Child Care Subsidy Policy & Procedures Manual (WVCCSPP) § 2.5.4.11 provides, in part:

Reporting changes in circumstances within five days. Failure to report changes to the agency may result in case closure, repayment of services used for time not approved, and/or 30-day penalty closure before services can be reopened. Income changes during the twelve (12) period will not impact a parent’s continuing eligibility for care unless the parent requests a redetermination due to decreases in income that might result in reduced fees. However, the parent(s) shall report the following changes in circumstances to the provider and to the agency, as appropriate:

C. Changes in employment – place of employment or days and hours worked.

E. Loss of employment or termination from educational or training programs.

WVCCSPP § 3.2.3 provides, in part:

If both parents, or a parent and step-parent are in the home, child care services cannot be approved for work or training related needs unless both are participating in a qualifying activity, such as working or attending school/training.

WVCCSPP § 4.0 provides, in part:

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. If there are two parents in the home, both must be involved in a qualifying activity.

WVCCSPP § 4.7.2 provides, in part:

In certain extraordinary situations child care may be approved for children under the age of six years in the following circumstances: a family member's release from hospitalization; a recent determination of a temporary or permanent disability of a parent; physician ordered bed rest during pregnancy; medical treatment for a terminal illness. Exceptions are granted in order to give the family time to prepare and plan for coping with the illness and the effects of treatment and finding alternate child care arrangements/assistance.

WVCCSPP § 4.7.2.2 provides, in part:

A disability exception approval will not exceed 6 months. This category of policy exception is for one time only per child care case or same family. The exception is granted in order to give the family time to prepare and plan for coping with the disability and finding alternate child care arrangements/assistance in cases of newly determined temporary or permanent disability of the parent, the documentation shall include, but not be limited to:

- A. An official disability determination by a state or federal agency with a determination date that is within three months of the child care application or redetermination.
- B. A treatment plan and the medical statement by a licensed physician which describes how this condition prevents the care of children.
- C. A disability exception approval will not exceed 6 months.

WVCCSPP § 6.1.1 provides, in part:

The financial eligibility of each family receiving child care services shall undergo a status check periodically.

WVCCSPP § 6.5.2 provides, in part:

In unusual, extraordinary circumstances, exceptions to eligibility policy can be requested. Exceptions will be granted on an individual basis and only in situations where the circumstances of the client are so different from the norm that the policy is unfair or inappropriate when applied to the individual client. Consideration is given to factors such as the age of the child, the child's ability for self-care, the amount of supervision or hands-on care required for the child, and if there are other

household members present who can aid in the supervision of the child. When an exception request is made, CCR&R case managers shall inform parents the approval is not guaranteed. The parent and provider must establish private payment arrangements to ensure that the provider is paid during the time the exception request is reviewed.

West Virginia Supplemental Child Care Assistance Policy & Procedures Manual (WVSCCAP) § 5.1.1 provides, in part:

The continued eligibility of each family receiving Supplemental Child Care Assistance services shall undergo a status check periodically, normally completed before the end of the eligibility period for each program.

DISCUSSION

The CARES Act provided federal funding that allowed essential workers to receive subsidized Child Care services without regard to the income eligibility requirements during the COVID-19 healthcare crisis. The Appellant and her spouse, [REDACTED] (hereafter, Mr. [REDACTED]) met the definition of essential workers, therefore, the application for subsidized Child Care services was approved despite exceeding the income limits set forth in policy.

The Respondent testified that on July 01, 2021, a Notification of Redetermination for Child Care Program benefits was issued to the Appellant. The notification instructed that the included forms must be completed and returned to the Respondent by July 15, 2021, or Child Care Program benefits would be terminated effective July 31, 2021. On July 08, 2021, the Appellant submitted the completed packet to the Respondent via facsimile. Subsequent to the Appellant's submission, the Respondent issued an additional notice requesting further verification of employment status for Mr. [REDACTED]. The notice indicated that the employment verification must be received by July 31, 2021, or the Appellant's Child Care Program benefits would be terminated effective that date.

On July 14, 2021, the Appellant resubmitted the July 08 documents along with a copy of Mr. [REDACTED] notification of retirement from [REDACTED]. The notification indicated that due to "recent health scares" Mr. [REDACTED] would be retiring from [REDACTED] effective April 02, 2021. The Respondent testified that because Mr. [REDACTED] was not participating in a qualifying activity, on August 03, 2021, a Notification of Closure letter was issued advising the Appellant that effective July 31, 2021, she was no longer eligible for Child Care Program benefits. The Appellant disputed the Respondent's decision to terminate her Child Care Program benefits and reasoned that due to Mr. [REDACTED] health conditions, an exception should be granted. The Respondent bears the burden of proof and had to prove by a preponderance of evidence that the Appellant was ineligible for an illness/disability related exception from the policy requirement that both parents participate in qualifying activities in order to be eligible for Child Care Program benefits.

The Appellant testified that due to various heart related conditions, Mr. [REDACTED] was placed in a life vest in November 2020, therefore, his employer would not allow him to perform his work duties

at full capacity. Because of these circumstances, Mr. [REDACTED] made the decision to retire from his employment at [REDACTED] to pursue Social Security Disability Benefits. Throughout the course of the hearing the Appellant alleged discrimination and subsequently argued that she would still be receiving Child Care Program benefits had a redetermination for benefits not been conducted. The Respondent testified that there was no notification of Mr. [REDACTED] disability until August 13, 2021, when the Appellant submitted the request for Fair Hearing along with a letter of explanation regarding Mr. [REDACTED] health conditions and notice of retirement. She further testified that once the Appellant became ineligible for essential worker Child Care Program benefits, the Respondent automatically assessed the Appellant for income based Child Care Program benefits but testified that the Appellant's income exceeded the limit established by policy. The Appellant did not contest that her income surpassed the eligibility limit for subsidized Child Care Program services.

Policy stipulates that a change in circumstances, such as a change of employment or the loss of employment, is to be reported within five (5) days. A failure to report these changes to the agency may result in case closure, repayment of services used for time not approved, and/or a 30-day penalty closure before services can be reopened. Policy further specifies that the continued eligibility of each family receiving Supplemental Child Care Assistance services shall undergo a status check periodically in order to assess the continued need for services. 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. If there are two parents in the home, both must be involved in a qualifying activity.

In extraordinary circumstances, requests for an illness or disability related exception from the policy requirement that both parents participate in qualifying activities may be granted. These exceptions are granted on an individual basis and only in situations where the circumstances of the client are so different from the norm that the policy is unfair or inappropriate when applied to the individual client. Policy exceptions shall be reviewed by the CCR&R supervisor for approval and then forwarded to the Division of Early Care and Education. Child care may be approved for children under the age of six (6) in the following circumstances: a family member's release from hospitalization; a recent determination of a temporary or permanent disability of a parent; physician ordered bed rest during pregnancy; and/or medical treatment for a terminal illness. Policy exceptions are granted in order to give the family time to prepare and plan for finding alternate child care arrangements/assistance. A disability exception approval is for one time only per child care case or same family and will not exceed six (6) months. The submitted documentation shall include, but not be limited to 1) an official disability determination by a state or federal agency with a determination date that is within three months of the child care application/redetermination; and 2) a treatment plan and medical statement by a licensed physician which describes how this condition prevents the care of children.

The preponderance of evidence demonstrated the Appellant failed to report a change to the agency until August 13, 2021, when the Appellant submitted the request for Fair Hearing and the letter of explanation regarding Mr. [REDACTED] retirement. The evidence also demonstrated the Appellant failed to request an illness/disability related exception or submit a treatment plan and medical statement by a licensed physician describing how Mr. [REDACTED] condition prevents the care of children.

Therefore, it is the finding of this Hearing Officer that the Respondent acted correctly to terminate the Appellant's Child Care services based on failure to participate in a qualifying activity.

CONCLUSIONS OF LAW

- 1) The CARES Act provided federal funding that allowed essential workers to receive subsidized Child Care services without regard to the income eligibility requirements during the COVID-19 healthcare crisis.
- 2) The Appellant and her spouse were approved to receive subsidized Child Care Program benefits as essential workers, despite exceeding the income limits set forth in policy.
- 3) Pursuant to policy, both parents in the household must participate in a qualifying activity or be eligible for a policy exemption to be eligible for subsidized Child Care Program benefits.
- 4) The evidence failed to verify that the Appellant met the requirement for a one time, six (6) month policy exception.
- 5) The Respondent's action to terminate the Appellant's Child Care Program benefits due to failure to participate in a qualifying activity was correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Respondent to terminate the Appellant's Child Care Program benefits based on failure to participate in a qualifying activity effective August 1, 2020.

ENTERED this ____ day of October 2021.

Angela D. Signore
State Hearing Officer