



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

**Bill J. Crouch  
Cabinet Secretary**

**BOARD OF REVIEW  
Raleigh County DHHR  
407 Neville Street  
Beckley, WV 25801**

**Jolynn Marra  
Interim Inspector General**

November 17, 2021

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: [REDACTED] v. WV DHHR  
ACTION NO.: 21-BOR-2261

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,

Kristi Logan  
Certified State Hearing Officer  
Member, State Board of Review

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

cc: Jennifer Stewart, MountainHeart Resource and Referral Agency

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

██████████

**Appellant,**

**v.**

**Action Number: 21-BOR-2261**

**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 November 16, 2021, on an appeal filed October 18, 2021.

The matter before the Hearing Officer arises from the October 20, 2021, decision by the Respondent to revoke the Appellant's Child Care Provider Service Agreement.

At the hearing, the Respondent appeared by Jennifer Stewart, MountainHeart Resource and Referral Agency. Appearing as a witness for the Respondent was Jennifer England, MountainHeart Resource and Referral Agency. The Appellant appeared *pro se*. All witnesses were sworn in and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Child Care Review Form received August 3, 2021
- D-2 Change of Information Notification Form received August 3, 2021
- D-3 Request for Payment of Child Care Services received August 13, 2021
- D-4 Child Care Attendance Sheets for August 2021
- D-5 Statement from ██████████ dated August 31, 2021
- D-6 Correspondence from Division of Early Care and Education dated September 7, 2021
- D-7 Letter of Provider Notification dated October 20, 2021
- D-8 Cancellation Notice for Child Care Provider Services Agreement dated October 20, 2021
- D-9 Child Care Benefit Repayment Agreement (unsigned copy)

## **Appellant's Exhibits:**

A-1 Screen Print of Text Messages from [REDACTED] from August 8 – August 14, 2021

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 subsidized Child Care Provider.
- 2) The Appellant provided Child Care for the children of [REDACTED].
- 3) On August 3, 2021, [REDACTED] reported to MountainHeart Child Care Resource and Referral Agency (MountainHeart) that as of July 28, 2021, she was no longer using the Appellant as a Child Care Provider (Exhibit D-2).
- 4) The Appellant provided Child Care for [REDACTED] two (2) children on August 4, 2021 (Exhibit D-4).
- 5) The Appellant failed to have [REDACTED] sign the attendance sheet for her two children on August 4, 2021 (Exhibit A-1).
- 6) [REDACTED] notified the Appellant on August 8, 2021, that her children would receive Child Care from another provider (Exhibit A-1).
- 7) The Appellant met with [REDACTED] on August 12, 2021 and had her sign the attendance forms for the care the Appellant provided on August 4, 2021 (Exhibits D-4 and A-1).
- 8) The Appellant submitted a Request for Payment to MountainHeart on August 13, 2021 for the care she provided [REDACTED] children (Exhibit D-3).
- 9) The Appellant received payment for the care she provided to [REDACTED] children on August 4, 2021.
- 10) When processing [REDACTED] request to change Child Care providers, the MountainHeart case manager noticed the discrepancy between the date [REDACTED] reported that she was no longer using the Appellant as a provider and payment already issued to the Appellant in August 2021.
- 11) The case manager contacted [REDACTED] regarding the discrepancy. [REDACTED] reported that she did not use the Appellant as a provider in August 2021.

- 12) [REDACTED] provided a written statement on August 31, 2021 stating that the Appellant did not provide care to her children in August 2021 (Exhibit D-5).
- 13) MountainHeart determined that the signature on the attendance sheets submitted for payment by the Appellant did not match the signature of [REDACTED].
- 14) A Cancellation Notice for Child Care Provider Services Agreement was sent to the Appellant on October 20, 2021 advising that her Child Care Provider Services Agreement was being revoked due to intentional misrepresentation for billing for care provided on August 4, 2021 when the children were not in her care (Exhibit D-8).
- 15) The Appellant was also notified on October 20, 2021 that she was required to repay \$1,140 that was issued for [REDACTED]'s children (Exhibit D-9).

### **APPLICABLE POLICY**

**Child Care Subsidy Policy Manual §7.7 Child Care Attendance Sheets** states all Child Care Providers are required to maintain sign in and out form for all children in care to confirm child attendance and justify the days and hours of care for enhanced rates for nontraditional work hours. Child Care Providers shall be given a supply of Child Care Attendance Sheets (ECE-CC-10-G). All types of Child Care providers, with the exception of Child Care centers, are required to use the prescribed form. While centers are not required to use the same format, they may be asked to do so. If the Child Care Resource and Referral (CCR&R) Staff has concerns about consistent errors on the center's chosen format, the CCR&R and the center shall work together to decide upon a format that reduces errors in submission, including use of the Child Care Attendance Sheets. Centers with electronic sign in and out system may substitute reports generated by their systems if parents sign off at the end of each month. Copies of the forms shall be retained in the provider's files for five years and shall be available for review by DHHR staff.

#### **§7.7.1. Completion of Attendance Sheets.**

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 children's attendance. Times must be shown as AM or PM. Children who attend in the morning, leave and return in the afternoon must be signed in and out both times. Caregivers shall not sign as the client, as this is considered misrepresentation and can result in negative action.

#### **§7.7.2. Sign In and Out**

Children shall not be allowed to sign themselves in and out. In cases where a child is transported to and from Child Care by bus or van, a teacher, aide, driver, director or caregiver may sign the child in and out if the client signs off on the attendance sheet at the end of the month verifying that their child was in care before and after school on those dates. However, if the client is available, he or she must be responsible for signing the children in and out; a client may not request that the caregiver sign a child in or out as a matter of convenience.

### **§7.7.3. Accuracy of Records.**

The provider's signature on the sign in and out forms is certification that this is an accurate record of the attendance of all children in care. Failure to keep accurate records may result in negative action, to include corrective and/or legal action, referral for misrepresentation, and/or requests for repayment of any funds received by the provider as payment for subsidized children. If there is substantiated misrepresentation by the provider, the provider shall be prohibited from future participation in the Certificate Program. However, if the provider makes full restitution, a one-time waiver may be considered. The provider must request the waiver in writing, and the CCR&R shall forward the request to the Division of Early Care and Education for approval/denial.

### **§8.3.2. Misrepresentation**

Misrepresentation occurs when a specific Child Care policy section is violated as a result of the information not having been reported by the client or reported falsely. If the CCR&R Agency becomes aware that the client/provider is attempting to or has received services/payments to which they are not entitled, the CCR&R case manager must take corrective action to prevent further payments from occurring. Improper payments made as a result of misrepresentation shall be referred to Investigations and Fraud Management (IFM) when the amount exceeds \$1,000.00. If the amount does not exceed \$1000.00, the CCR&R shall initiate repayment procedures. A willfully false statement is one that is deliberately given, with the intent that it be accepted as true, with the knowledge that it is false. It is an essential element in a misrepresentation charge that the client/provider knew his statement was false.

**§8.3.2.1.** Examples of a willfully false statement include the following:

- A. The client states that he does not receive child support when he really does.
- B. The child care provider bills for days when the child was not in their care.
- C. The client states that she/he is employed when she/he is not.

## **DISCUSSION**

Pursuant to policy, willful misrepresentation occurs when a Child Care provider bills for days when a child was not in their care. The Respondent determined that the Appellant falsely billed for care provided to [REDACTED] children on August 4, 2021, when they were not in her care, and revoked her Child Care Provider Services Agreement.

The Respondent based its decision to revoke the Appellant's Child Care Provider Services Agreement based upon [REDACTED] statement that the Appellant did not care for her children in August 2021 and by comparing signatures from the attendance sheets and signatures supplied by [REDACTED].

However, the Appellant provided text messages received by [REDACTED] confirming that the Appellant cared for her children on August 4, 2021 and confirming that [REDACTED] signed the attendance sheets that the Appellant submitted for payment. The Respondent did not dispute the validity of the text messages provided as evidence.

Whereas the Appellant provided care for [REDACTED] two children on August 4, 2021, she was

eligible to receive payment for their care. The Appellant did not falsify the attendance sheets for which she received payment and willful misrepresentation did not occur.

### **CONCLUSIONS OF LAW**

- 1) Pursuant to policy, willful misrepresentation occurs when a Child Care provider bills for days when a child was not in their care.
- 2) The Appellant provided care for [REDACTED] two children on August 4, 2021, for which she received payment.
- 3) [REDACTED] provided false information to the Respondent regarding the care provided by the Appellant.
- 4) The Respondent incorrectly revoked the Appellant's Child Care Provider Services Agreement based upon willful misrepresentation.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to revoke the Appellant's Child Care Provider Services Agreement due to willful misrepresentation.

**ENTERED this 17<sup>th</sup> day of November 2021.**

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**Kristi Logan**  
**Certified State Hearing Officer**