



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of the Inspector General
Board of Review**

**Jeffrey H. Coben, MD
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

May 18, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1495

Dear [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: Recourse to Hearing Decision
Form IG-BR-29

cc: William Smalley, Department Representative

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

IN THE MATTER OF:

ACTION NO.: 23-BOR-1495

██████████,

Appellant,

v.

**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 May 4, 2023, on a timely appeal filed April 6, 2023.

The matter before the Hearing Officer arises from the March 28, 2023 decision by the Respondent to deny the Appellant's application for Child Care services based on the failure to provide verification of a qualifying activity.

At the hearing, the Respondent appeared by Chelsie Hunt. Appearing as a witness for the Respondent was Shantae Williams. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Department's Exhibits:

- | | |
|-----|--|
| D-1 | Undated excerpt of the Appellant's application for Child Care services |
| D-2 | Notification of New Applicants, dated March 2, 2023 |
| D-3 | New Employment Verification form, dated March 3, 2023 |

D-4	Client Contact Report, entries dated March 2, 2023, through April 3, 2023
D-5	Duplicate to D-4
D-6	Notification of New Applicants, dated March 14, 2023
D-7	Notice of decision, dated March 28, 2023
D-8	Duplicate to D-4
D-9	Duplicate to D-4
D-10	Excerpt of Child Care Subsidy Policy, effective September 1, 2022
D-11	Notice of decision, dated March 28, 2023 Hearing request form, signed April 5, 2023

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 an applicant for Child Care services.
- 2) The Respondent mailed a notice dated March 2, 2023 (Exhibit D-2) to the Appellant listing "...information needed regarding your child care application."
- 3) On March 13, 2023, Respondent worker Chelsie Hunt recorded case comments (Exhibits D-4, D-5, D-8, and D-9; entry dated March 13, 2023, at 3:57 PM) that indicated the Appellant was paid "...commission only through cash/direct deposit and taxes were not taken out..."
- 4) Upon discovery of the change in the nature of the Appellant's income, the Respondent mailed the Appellant a notice dated March 14, 2023 (Exhibit D-6) which requested verification of qualifying activity which included "verification of self-employment."
- 5) The notice (Exhibit D-6) required verification of self-employment which included: a copy of the Appellant's current State of West Virginia Business Registration, copy of consultant contract for independent sales, and a copy of any other required licenses or certifications; and, income tax records, ECE-CC-1 (Self-Employment Ledger), client business records

from an outside accountant, or ledger books or other bookkeeping records...for at least one month of sales showing minimum wage and an average of 20 hours worked per week.

- 6) The notice (Exhibit D-6) provided a deadline of March 27, 2023, for the required information, and indicated the Appellant's "...application would be denied/withdrawn" if the deadline was not met.
- 7) The Appellant did not provide the required information by the set deadline.
- 8) The Respondent mailed a notice dated March 28, 2023 (Exhibit D-7), which reads, in pertinent part, "Your application for child care has been denied because: you failed to provide verification of a qualifying activity by March 27, 2023."

APPLICABLE POLICY

The Child Care Subsidy Policies and Procedures Manual, Chapter 4, addresses the determination of need for child care, and, at §4.0, provides:

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...

At §4.3.6, this policy outlines the conditions for approval of self-employment as a qualifying activity. At §4.3.6.2, the policy sets a requirement of minimum self-employment activity of 20 hours per week and income of at least minimum wage per hour. At §4.3.6.3, policy requires "...current State of West Virginia Business Registration, copy of consultant contract for independent sales, and a copy of any other required trade licenses or certifications..." At §4.3.6.4, policy requires "...a complete copy of their current tax return by April 30 of each year, including the 1040 form, 1040 Schedule C, (Profit of Loss from Business), 1040 Schedule SE, (Self-Employment tax), and any other tax forms as required per type of self-employment..."

The Child Care Subsidy Policies and Procedures Manual, Chapter 2, addresses the application process. At §2.4.3, regarding notifying the parent of an application status, §2.4.3.2 provides:

If the application cannot be completed due to the need for additional information or documentation, the case manager shall issue a Parent Notification Letter (DAY-0176) indicating that the application will be denied if the necessary information is not received within 13 days.

DISCUSSION

The Appellant requested a fair hearing to appeal the Respondent's decision to deny her application for the Child Care services due to failure to provide verification of a qualifying activity. The Respondent must show by a preponderance of the evidence that the Appellant did not provide this verification.

The Appellant applied for Child Care services and was provided a ‘pending letter’, or a checklist of items necessary to process her application (Exhibit D-2). Initially, this pending letter was based on the need to show that the Appellant’s full-time employment met the policy requirements for a qualifying activity. Upon discovering that the Appellant does not have taxes taken out of her income, but is paid directly, they reissued a pending letter (Exhibit D-6) to reflect the self-employment verifications needed for the same reason – to establish a qualifying activity that shows a need for Child Care services. The second letter was dated March 14, 2023, provided a deadline of March 27, 2023, and required the items shown in Child Care policy for establishing self-employment as a qualifying activity.

The Appellant did not meet the established deadline for providing this information. In contacts noted between the Appellant and Department workers (Exhibits D-4, D-5, D-8, and D-9), as well as in testimony during the hearing, the Appellant explained that the cost of a business license was prohibitive. Department policy allows time for Appellants to obtain the information necessary for application processing but does not have any provision exempting necessary information because of the cost of obtaining that information. There was no dispute that the Appellant did not provide the information required on the Department’s notice, or ‘pending letter’, (Exhibit D-6), and as such the Department correctly denied the Appellant’s application for Child Care services.

CONCLUSIONS OF LAW

- 1) Because the Appellant’s application did not include verification of a qualified activity, the Respondent was required to issue a notice requesting this information and setting a 13-day deadline for providing the information.
- 2) Because the Appellant did not provide this required information by the set deadline, the Respondent correctly denied the Appellant’s application for Child Care services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant’s application for Child Care services due to an unverified qualifying activity.

ENTERED this _____ day of May 2023.

Todd Thornton
State Hearing Officer