



**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**

March 8, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 23-BOR-1223

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Diana Gillispie, BFA, WV DHHR

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

[REDACTED]

Appellant,

v.

Action Number: 23-BOR-1223

**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 [REDACTED]. 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 March 7, 2023.

The matter before the Hearing Officer arises from the January 30, 2023 decision by the Respondent to issue a First Offense Strike for failure to comply with the Provider Services Agreement (PSA), resulting in the loss of American Rescue Plan (ARP) funds.

At the hearing, the Respondent appeared by Kimberly Perrine, Subsidy and Resource Coordinator. Appearing as a witness for the Respondent was Diana Gillispie, Child Care Policy Specialist, Division of Early Care and Education. The Appellant appeared *pro se*. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Child Care Provider Services Agreement, signed and dated March 29, 2021
- D-2 [REDACTED] notice of termination of daycare services presented to [REDACTED] on January 27, 2023
- D-3 Strike One - First Offense letter dated January 30, 2023
- D-4 Payment Certification Agreement, signed and dated October 25, 2021
- D-5 West Virginia Child Care Stabilization Payment Policy & Procedure Manual
- D-6 Letter of Ineligibility dated January 30, 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 is doing business as [REDACTED].
- 2) The Appellant entered into a Provider Services Agreement (PSA) with the Respondent. (Exhibit D-1)
- 3) Under the signed PSA, the Appellant agreed that unless an emergency occurs, a two-week notice of termination to parents would be given to the parents of children in care. (Exhibit D-1)
- 4) Under the signed PSA, the Appellant agreed that as a Critical Care Provider, the Center would accept and provide services for eligible children during the COVID-19 public health crisis. (Exhibit D-1)
- 5) The Appellant was also participating in the West Virginia Child Care Stabilization Grant program, funded by the American Rescue Plan (ARP) during the COVID-19 public health crisis, which provided additional funds to those child care centers meeting eligibility criteria. (Exhibits D-4 and D-5)
- 6) Under the signed Payment Certification Agreement of the ARP, the Appellant acknowledged agreement to be in compliance with the PSA and to maintain licensing and regulatory requirements. (Exhibit D-4)
- 7) On January 27, 2023, the Appellant issued an immediate termination of daycare services to [REDACTED], a parent of one of the Center's children. (Exhibit D-2)
- 8) The Respondent issued a Strike One - First Offense Letter on January 30, 2023, to the Appellant notifying her that she was in violation of her PSA by terminating child care services without the required two week notice to the parent. (Exhibit D-3)
- 9) The Respondent issued a Letter of Ineligibility on January 30, 2023, to the Appellant notifying her that because she was found to be non-compliant with her PSA, her ARP fund participation would be terminated. (Exhibit D-6)

APPLICABLE POLICY

WV Child Care Stabilization Payment Policy & Procedure Manual, §2.2.4 requires that a Provider participant have a Provider Services Agreement in good standing.

WV Child Care Stabilization Payment Policy & Procedure Manual, §2.3 explains that a Provider participant is ineligible if the Provider is in violation of any section of the Provider Services Agreement.

West Virginia Child Care Subsidy Policy & Procedures, Chapter 8, §8.8.2.1.b, First Offense – Strike One, Service Contract, requires that when a first time a provider violates the service agreement, the case manager should notify the provider of the breach and remind the provider of the terms of the service agreement. A Corrective Action Plan is not done for the first occurrence.

DISCUSSION

The Appellant is the owner and operator of [REDACTED]. To be eligible for the WV Child Care Subsidy program, the Appellant agreed to adhere to the terms of a Child Care Provider Services Agreement (PSA). Additionally, the Appellant was a participant in the American Rescue Plan (ARP) Act Child Care funding program where she received additional funds during the COVID-19 health care crisis. As an ARP participant, the Center was considered a Critical Child Care Site.

On January 27, 2023, the Appellant issued notice of immediate termination of daycare services to [REDACTED], the parent of one of the Center's children, due to the child's behavioral issues. On January 30, 2023, the Respondent issued a Strike One - First Offense Letter to the Appellant citing violation of the terms of her PSA by not providing a two-week termination notice. Additionally, on January 30, 2023, the Respondent issued a Letter of Ineligibility to the Appellant informing her that the Center was in violation of the ARP agreement and that the Center would no longer receive ARP funds.

The Appellant appeals the Respondent's decision stating that according to the terms of her home daycare contract signed by [REDACTED], the Appellant was allowed to terminate the daycare services at any time during the 30-day probationary period. [REDACTED] began receiving daycare services for her three-year-old child on January 23, 2023. Additionally, the Appellant states that the behavioral issues that [REDACTED] child exhibited such as tantrums, knocking over chairs, kicking, throwing cups, and spitting in the Appellant's face amounted to an "emergency" as it was disruptive to the daycare.

It is not contested that providers are allowed to have their own agreements in place between the parents and the daycare providers. However, when those rules are in contradiction to the PSA, then the PSA governs. Thus, the PSA requirement of a two-week termination notice unless there is an emergency supersedes the Center's home daycare contract with the parent allowing for immediate termination for any reason during a 30-day probationary period. It is understandable that the Appellant was angry and frustrated with the behavioral issues that the Appellant alleges

were exhibited by the Center's child, however, there was no persuasive evidence presented showing that the alleged behaviors escalated to an emergency to warrant an immediate termination of daycare services.

The Appellant also contends that [REDACTED] failed to provide a WV DHHR child health assessment form, emergency information form, and child care certificate, which the Appellant argued constituted an emergency for immediate dismissal from the daycare. However, the Respondent's representative, Kimberly Perrine, testified that a parent has up to 30 days to submit the child health assessment form, which had not yet expired. Ms. Perrine further testified that a provider could decide to postpone daycare services until the emergency and child care certificate forms are received, but the Appellant elected to begin childcare services without those forms and could have given a two-week notice of termination in that instance.

Lastly, the Appellant contends that the agreement to provide care to [REDACTED] child was invalid as it was [REDACTED], the child's father, who receives subsidy benefits for the child, not [REDACTED]. Had the Appellant required the child care certificate prior to providing daycare services for the child, this fact could have been established. Moreover, the issue of [REDACTED] not having a child care certificate in her name relates to subsidy payments and, again, a two-week termination notice could have been issued. Because the Center is considered a Critical Child Care Site, it must abide by the provisions in the PSA for those Critical Child Care Sites receiving ARP funds and applies to all eligible children at those Critical Child Care Sites.

The Appellant terminated daycare services without a two-week termination notice to the parent as required by the PSA. No emergency was established that would have allowed the Appellant to immediately terminate the daycare services for [REDACTED] child. The Appellant violated the terms of her PSA. Because she violated the terms of her PSA, under Child Care Stabilization policy, the Appellant is ineligible to participate in ARP funds. The Respondent's decision to issue a First Strike Letter to the Appellant and terminate the Appellant's ARP funding is affirmed.

CONCLUSION OF LAW

- 1) When a Child Care Provider is found to have violated the terms of their PSA for the first time, policy requires that a First Offense Strike Letter be issued.
- 2) The Appellant did not establish that an emergency existed that would have allowed her to terminate daycare services without a two-week notice to the parent.
- 3) The Appellant was in violation of her PSA when she terminated daycare services without a two-week notice to the parent.
- 4) Per WV Child Care Stabilization Payment Eligibility policy, providers who are in violation of any section of their PSA are ineligible for the ARP funding.
- 5) The Respondent correctly issued a First Offense Strike Letter to the Appellant.

- 6) Because the Appellant was in violation of her PSA, the Appellant was ineligible to receive ARP funds per policy.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to find the Appellant in violation of her PSA, resulting in the loss of ARP funds.

ENTERED this 8th day of March 2023.

Lori Woodward, Certified State Hearing Officer