



**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 23, 2023

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 23-BOR-1380

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: Kimberly Perrine, BFA, WV DHHR

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

[REDACTED],  
**Appellant,**

**v.**

**Action Number: 23-BOR-1380**

**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 May 3, 2023.

The matter before the Hearing Officer arises from the March 14, 2023 decision by the Respondent to determine an overpayment of Child Care subsidy benefits due to a programmatic infraction by the Appellant.

At the hearing, the Respondent appeared by Kimberly Perrine, Subsidy and Resource Coordinator. The Appellant appeared *pro se*. All witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Appellant's request for payment child care services and attendance sheets submitted for the month of February 2023
- D-2 Email exchange between Denise Richmond and [REDACTED], March 3 and 6, 2023
- D-3 Department of Health and Human Resources Child Care Benefit Repayment Agreement
- D-4 Child Care Resource and Referral letter from Kimberly Perrine, dated March 8, 2023
- D-5 Blank Child Care Certificate
- D-6 Child Care Certificate issued to [REDACTED], issued for [REDACTED], issue date February 24, 2023
- D-7 Child Care Certificate issued to [REDACTED] issued for [REDACTED], issue date August 31, 2022
- D-8 Child Care Certificate issued to [REDACTED] issued for [REDACTED], issue date March 13, 2023

- D-9 Child Care Certificate issued to [REDACTED], issued for [REDACTED]  
[REDACTED], issue date December 20, 2022
- D-10 Child Care Certificate issued to [REDACTED], issued for [REDACTED]  
[REDACTED], issue date December 28, 2022
- D-11 Child Care Certificate issued to [REDACTED], issued for [REDACTED]  
[REDACTED], issue date December 20, 2022
- D-12 Child Care Certificate issued to [REDACTED], issued for [REDACTED]  
[REDACTED], issue date January 9, 2023
- D-13 Child Care Provider Agreement for [REDACTED], signed and  
dated April 16, 2021
- D-14 Child Care Provider Agreement for [REDACTED],  
signed and dated February 16, 2023
- D-15 West Virginia Child Care Stabilization Payment Policy & Procedure Manual, §§7.1,  
7.7.3, 8.3.3, excerpts

**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] as a licensed Home  
Childcare provider.
- 2) The location of the Home Childcare changed from [REDACTED]  
[REDACTED]
- 3) In February 2023, the Appellant opened a Facility Childcare located at [REDACTED]  
[REDACTED]
- 4) The Home Childcare and Facility Childcare are two separate childcare services owned and  
operated by the Appellant.
- 5) The Appellant submitted a request and received payment for children she presented as  
receiving Home Childcare services at the [REDACTED] site in the month of February  
2023. (Exhibit D-1)
- 6) The Appellant did not provide the February 2023 childcare services at the [REDACTED]  
Home Childcare location.
- 7) The Appellant provided the February 2023 childcare services at the [REDACTED]  
Facility Childcare location.

- 8) The Appellant's request for payment for six out of seven children had approved childcare certificates for the Home Childcare in February 2023. (Exhibits D-7 – D-12)
- 9) One of the listed children had an approved childcare certificate for the Facility Childcare beginning February 16, 2023. (Exhibit D-6)
- 10) The Appellant resubmitted her February 2023 request for payment for the Facility Childcare.
- 11) On March 8, 2023, the Respondent notified the Appellant that her resubmitted February 2023 request could not be processed because six out of the seven children for whom the Appellant provided Facility Childcare only held childcare certificates for Home Childcare, and because the seventh child's eligibility for the Facility Childcare began on February 16, 2023. (Exhibit D-4)
- 12) On or about March 8, 2023, the Respondent notified the Appellant that due to the Appellant's error, an improper payment was made to her for February 2023 and repayment was due. (Exhibit D-3)
- 13) The Appellant submitted repayment in full but appeals the Respondent's decision to establish the repayment.
- 14) The Appellant had a Provider Services Agreement (PSA) with the Respondent as a Home Childcare provider. (Exhibit D-13)
- 15) The Appellant entered into a separate PSA with the Respondent on February 16, 2023, as a Facility Childcare provider. (Exhibit D-14)
- 16) Under the signed PSA, the Appellant acknowledged that a valid certificate from each family must be in place to receive payment and that repayment of any overpayments may be pursued by the Respondent. (Exhibits D-13 and D-14)

### **APPLICABLE POLICY**

**West Virginia Child Care Subsidy Policy & Procedures, Chapter 7, *PURCHASE OF CHILD CARE THROUGH CERTIFICATES*, et seq.**, explains that West Virginia's subsidized child care program is a certificate system. Certificates authorize payment for parents in lieu of cash. Providers are paid directly upon receipt of an invoice called a request for payment. This system provides maximum opportunity for parental choice.

**WV CCSPP, Chapter 7, §7.1**, explains in part, when a family is determined to be eligible for child care services, a certificate is issued and serves as proof that the Department of Health and Human Resources will be responsible for payment and contains pertinent information about the family and the amount of the fee to be paid by the parent. The parent shall use the certificate to

purchase care from a child care provider of choice. After a family has been determined eligible for child care services, a parent may choose to purchase care from a provider other than the one previously selected. **The parent must request a change of provider by notifying the CCR&R within 5 days of the change.** [Emphasis added]

WV CCSPP, Chapter 8, §8.3.3, *Programmatic Infractions*, in part, states that there are times when it is difficult to discern whether an improper payment occurred due to willful misrepresentation or is simply the result of a client/provider's genuine confusion over subsidy program rules and responsibilities. When the case manager believes that improper payment is the result of the client's failure to understand, it is a programmatic infraction. **It is the CCR&R's responsibility to collect improper payments in this instance, regardless of the amount.** [Emphasis added]

## **DISCUSSION**

The Appellant is doing business as [REDACTED] providing childcare services. The Appellant provided Home Childcare services previously at [REDACTED] which is now located at [REDACTED]. In addition to her Home Childcare services, the Appellant opened a Facility Childcare in February 2023, located at [REDACTED]. The children in the Appellant's Home Childcare actually received Facility Childcare services in the month of February 2023. However, the Appellant submitted a request, and received payment, for the month of February 2023 for children she reported had received Home Childcare services at [REDACTED]. Because the children for whom the Appellant requested payment did not have a valid childcare certificate for Facility Childcare, the Respondent determined that the Appellant was improperly paid due to a programmatic infraction. The Respondent established a repayment claim against the Appellant for the improperly paid February 2023 childcare. Both of the Appellant's childcare sites remain open and no further action was taken regarding the circumstances of the improper payment. Although the Appellant has made repayment in full to the Respondent, she does not believe a repayment should have been established.

The Appellant testified that she does not dispute the facts of the case; however, she does believe she should not be held accountable for the improper payment. The Appellant maintained that she cannot be responsible for the parents' inaction in obtaining a new childcare certificate for the Facility. However, policy requires a valid childcare certificate to guarantee payment. This policy is contained in the PSA entered into by the Appellant and the childcare certificate provided to the parents. The children were provided at the Facility Childcare and did not have a valid childcare certificate for the Facility Childcare, for those days in February that the Appellant submitted a request for payment.

The Appellant also contended that it was unclear whether a new childcare certificate was necessary as the provider was the same as the Home Childcare, just a different provider number. However, because there was a different provider number given for the Facility Childcare and separate requirements needed to be fulfilled by the Appellant to open the Facility Childcare, the Appellant's

argument is unconvincing. Moreover, if there was any question as to whether a new childcare certificate was necessary for the Facility Childcare, then the Appellant should have gotten it clarified prior to moving the childcare children from Home Childcare to Facility Childcare.

It is noted that the Appellant began rendering Facility Childcare prior to being fully approved to open and submitted a request for payment indicating that the children received Home Childcare at [REDACTED]. Nonetheless, the Respondent found that the error was a programmatic infraction. Policy requires repayment of programmatic infractions. Therefore, the Respondent's finding of a repayment claim against the Appellant for the improper payment is affirmed.

### **CONCLUSION OF LAW**

- 1) In order to receive payment for childcare services, the childcare provider must have a valid childcare certificate from each family.
- 2) The Appellant did not receive a valid childcare certificate for Facility Childcare from the parents of six out of the seven children for February 2023.
- 3) Because the Appellant submitted an incorrect request for payment for Home Childcare when, in fact, the children received Facility Childcare, the payment she received for services was incorrect.
- 4) The Respondent determined that an improper payment was made to the Appellant due to a programmatic infraction.
- 5) Because policy requires that improper programmatic infraction payments be repaid, the Respondent's decision to establish a repayment is affirmed.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to establish a repayment against the Appellant for the improper payment of the February 2023 childcare services.

**ENTERED this 23<sup>rd</sup> day of May 2023.**

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**Lori Woodward, Certified State Hearing Officer**