



June 26, 2024

[REDACTED]

RE: [REDACTED] v. DoHS/BFA  
ACTION NO.: 24-BOR-2371

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 Human Services. These same laws and regulations are used in all cases to ensure 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: Recourse to Hearing Decision  
Form IG-BR-29

cc: Jennifer Harper, [REDACTED] Child Care Resource & Referral

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL  
BOARD OF REVIEW**

██████████,

**Appellant,**

**v.**

**Action Number: 24-BOR-2371**

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES  
BUREAU FOR FAMILY ASSISTANCE,**

**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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on June 25, 2024, on an appeal filed on June 4, 2024.

The matter before the Hearing Officer arises from the April 23, 2024, decision by the Respondent to terminate Child Care benefits.

At the hearing, the Respondent appeared by Jennifer Harper, ██████████ CCR&R. The Appellant represented himself. The witnesses were placed under oath and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Child Care Parent Notification Letter Notice of Denial or Closure dated December 18, 2023
- D-2 Provider Notification Letter – Parent's Eligibility for Child Care dated December 18, 2023
- D-3 Letter from ██████████ received December 29, 2023
- D-4 Email from Jennifer Harper to Denise Richmond dated January 3, 2024
- D-5 Provider Notification Letter – Parent's Eligibility for Child Care dated January 3, 2024
- D-6 Letter from ██████████ received February 2, 2024
- D-7 Email Chain from **REMOVED** to Denise Richmond from February 6 through February 13, 2024
- D-8 Notification of New Applicants dated February 13, 2024
- D-9 Notification of New Applicants dated February 27, 2024
- D-10 Child Care Certificate dated February 27, 2024

- D-11 Provider Notification Letter – Parent’s Eligibility for Child Care dated February 27, 2024
- D-12 Child Care Parent Notification Letter Notice of Denial or Closure dated April 23, 2024
- D-13 Provider Notification Letter – Parent’s Eligibility for Child Care dated April 23, 2024
- D-14 Provider Notification Letter – Parent’s Eligibility for Child Care dated May 7, 2024
- D-15 Letter from [REDACTED] received May 9, 2024
- D-16 Letter from Division of Rehabilitation Services received May 9, 2024
- D-17 Email from Appellant to Jennifer Harper dated May 9, 2024
- D-18 Email Chain from Jennifer Harper to Denise Richmond from May 9 through May 10, 2024
- D-19 Email from Appellant to Jennifer Harper dated May 30, 2024
- D-20 Child Care Policy §§1.1.13 and 4.7.2
- D-21 Email from Appellant to Jennifer Harper dated June 3, 2024
- D-22 Hearing Request Notification Form
- D-23 Email from Appellant to Jennifer Harper dated June 5, 2024
- D-24 Client Contact Report from October 2022 through May 2024

**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 a recipient of Child Care benefits for his children, [REDACTED] case.
- 2) The Appellant and [REDACTED] the mother of [REDACTED], reside together with their shared children and her four (4) children.
- 3) In October 2023, [REDACTED] reported to her caseworker that the Appellant was not working and was unable to care for the children due to a medical condition (Exhibit D-24).
- 4) The Appellant was approved for a 90-day job search as his work activity until December 31, 2023 (Exhibit D-24).
- 5) On December 18, 2023, the Respondent issued a notice to [REDACTED] advising that verification of a work activity for the Appellant must be submitted by December 31, 2023, to continue receiving Child Care benefits (Exhibits D-1 and D-24).
- 6) The Appellant submitted a letter from [REDACTED] to the Respondent on December 29, 2023, that stated due to his medical condition, he was unable to care for children for extended periods of time (Exhibit D-3).

- 7) The letter was submitted to the Child Care policy unit on January 3, 2024.
- 8) Denise Richmond, Child Care Policy Specialist, denied the Appellant's request for a medical exception from participating in a work activity (Exhibits D-4 and D-24).
- 9) The Appellant submitted an updated letter from [REDACTED] to the Respondent on February 2, 2024, reiterating his inability to care for children (Exhibits D-6).
- 10) A medical exception was granted to the Appellant by Denise Richmond on February 6, 2024, to be reviewed in three (3) months (Exhibits D-7 and D-24).
- 11) The Respondent issued a Child Care certificate for [REDACTED] and [REDACTED] four children effective February 6, 2024 through May 6, 2024 (Exhibits D-10 and D-24).
- 12) On April 23, 2024, the Respondent sent a notice to [REDACTED] advising that her Child Care case would be closed effective May 6, 2024, unless a new statement from the Appellant's physician was submitted to redetermine his medical exception (Exhibits D-12 and D-24).
- 13) On May 9, 2024, the Appellant provided another letter from [REDACTED] stating that he was unable to care for children (Exhibits D-15 and D-24).
- 14) The medical exception request for an additional 3-month period was denied by Denise Richmond, citing that the letter provided by the Appellant on May 9 was identical to the February 2 letter, with only the date changed (Exhibits D-6, D-15, D-18 and D-24).

### **APPLICABLE POLICY**

Child Care Subsidy Policy and Procedure Manual Chapter 3 explains the determination of family eligibility:

#### **3.0 Family Eligibility**

In order to be eligible for child care services, the family must verify the identity of the head of household, meet WV residency requirements, income requirements, and activity requirements. A child must meet age and WV residency requirements, need child care for a portion of the day, and reside with the head of household applying for services.

#### **3.2 Family Criteria**

The child must reside or live at the same address, with a family meeting the following criteria: the family('s):

- Monthly gross income, by family size, falls within the eligibility guidelines in Appendix A, OR
- Receives TANF benefits (not including TANF benefits received for children only see 3.2.3.) and is participating in:
- WV Works approved training and education activities.
- Self-initiated training and education activities.

- Employment; OR
- Is receiving TANF for children only. However, families receiving TANF for children only must meet monthly gross income by family size.

### **3.2.3 Two Parent Households**

If both parents, or a parent and stepparent 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.

Child Care Subsidy Policy and Procedure Manual Chapter 4 explains determining the need for Child Care:

### **4.0 Need for Child Care**

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 of 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.

### **4.7 Exceptions to Eligibility: Policy Exceptions**

Policy exceptions shall be reviewed by the CCR&R supervisor for approval and then forwarded to the Division of Early Care and Education via FACTS.

#### **4.7.2 Illness**

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.

#### **4.7.2.2 Recent Determination of Temporary or Permanent Disability**

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:

- 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.
- A treatment plan and the medical statement by a licensed physician which describes how this condition prevents the care of children.
- A disability exception approval will not exceed 6 months.

Child Care Subsidy Policy and Procedure Manual Chapter 5 explains financial eligibility for Child Care services:

### **5.1 Family Size**

A family is defined as one or more adults and children, if any, related by blood or law and residing in the same household, with the following exceptions and interpretations:

#### **5.1.1. Adults Other than Spouses in the Household**

Adults other than spouses are considered separate families even if related in some manner other than as spouses. (In FACTS, these individuals are listed as Non-participating adults.)

#### **5.1.6. Multiple Family Households**

In situations where adults, who are not spouses, reside together, any children in the household will be considered part of the family of the parent(s).

#### **5.1.7. Unmarried Parents**

Although West Virginia does not recognize common law marriage, **a couple living together as spouses will be considered members of the same family if they are both biological, adoptive, or foster parents of a child or children living in the household.** However, **if a couple resides together and each has a child of their own and shares no children in common, they are two separate families** and entered into FACTS as such.

## **DISCUSSION**

Policy stipulates that families must demonstrate a need for care to be eligible for Child Care assistance. The parent must be involved in a qualifying activity that prevents the parent from providing care of 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. The Appellant contested the Respondent's termination of Child Care benefits for his failure to participate in a qualifying activity and his inclusion in [REDACTED] case.

The Appellant contended that he is not married to [REDACTED], and he has no legal responsibility over her children. The Appellant argued that he should not have been included in her Child Care case and he should have a separate case. Policy states that couples residing together as spouses will be considered members of the same family if the couple is the biological, adoptive or foster parents of children living in the household. The couple is considered a separate family if they do not have children in common. The Appellant and [REDACTED] have two children in common, therefore the Appellant, [REDACTED] and all six children are considered as one family.

The Appellant contested that the Respondent only approved the medical exception for three months, instead of the full six months as allowed by policy. The Appellant testified that he provided a statement detailing his medical condition and limitations, his inability to care for

children and his treatment plan to the Respondent as required by policy. The Appellant stated his medical condition is a permanent disability.

In certain situations, Child Care may be approved for children under the age of six due to a recent determination of a temporary or permanent disability of a parent. 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. Documentation for a disability exception shall include, but not be limited to, 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, a treatment plan and the medical statement by a licensed physician which describes how this condition prevents the care of children.

The Respondent's witness testified that the policy unit denied the additional 3-month medical exception because the letter submitted by the Appellant on May 9, 2024, was a duplicate of the letter submitted on February 2, 2024, with only the date of the letter updated. A representative from the Child Care policy unit did not appear to provide additional testimony regarding the reason why the information provided in February was sufficient to approve the medical exception and was insufficient to approve the medical exception for an additional three months. There was no testimony to explain why the Appellant was only granted a 3-month medical exception when the documentation provided by his practitioner indicated that the his condition was expected to continue longer the six months. Although policy does not permit medical exceptions to exceed six months, policy does not preclude the approval of the full 6-months as permitted by policy considering the permanency of the Appellant's documented medical condition.

Whereas policy requires unmarried adults residing in the same household, with their children in common, to be considered as one family, the Respondent's decision to include the Appellant, [REDACTED] in [REDACTED] Child Care is affirmed.

The Respondent failed to prove by a preponderance of the evidence that the Appellant was ineligible for the full 6-month medical exception as allowed by policy. Whereas there is no provision in policy that requires medical exceptions to be reviewed periodically, the decision of the Respondent to only allow a 3-month exception, and subsequent closure of the Appellant's Child Care benefits, cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) A couple living together as spouses will be considered members of the same family if they are both biological, adoptive, or foster parents of a child or children living in the household. However, if a couple resides together and each has a child of their own and shares no children in common, they are two separate families.
- 2) The Appellant and [REDACTED] reside together with their two common children therefore all members of the household must be included in the same Child Care benefit case.

- 3) Policy allows for medical exceptions from participating in a qualified activity for a maximum of six months.
- 4) The Appellant was granted a medical exception from participating in an activity from February 6 through May 6, 2024.
- 5) The preponderance of evidence failed to establish that the Appellant was ineligible for the full six months as permitted by policy.

### **DECISION**

It is the decision of the State Hearing Officer to **reverse** the decision of the Respondent to terminate the Appellant's Child Care benefits. Child Care benefits will be reinstated, effective May 7, 2024, and the Appellant will be granted a medical exception through August 6, 2024.

**ENTERED this 26<sup>th</sup> day of June 2024.**

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