



**State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
Post Office Box 1736  
Romney, WV 26757**

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

January 24, 2007

\_\_\_\_\_ and \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Mr. and Mrs. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your social service grievance hearing held December 21, 2006. Your hearing request was based on the Department of Health and Human Resources' action to propose cancellation of your child care service agreement and subsequent corrective action plan.

In arriving at a decision, the State Hearings 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.

Eligibility for the Child Care Provider program is based on current policy and regulations. Some of these regulations state in part: The Provider agrees to accept as payment for childcare services rendered the maximum amounts as established by the Agency. Allowable charges by the provider shall be limited to: reasonable registration fees and the provider shall inform the parent of these fees prior to enrollment.

The information, which was submitted at your hearing, revealed that you had engaged in an unreasonable practice of routinely billing registration fees to families receiving subsidized care.

It is the decision of the State Hearings Officer to uphold the Department in their actions to remedy this situation.

Sincerely,

Sharon K. Yoho  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
[REDACTED] Supervisor, MountainHeart

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

\_\_\_\_\_ and \_\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-3165**

**West Virginia Department of  
Health and Human Resources,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a grievance hearing concluded on December 21, 2006 for \_\_\_\_\_ and \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This grievance hearing was convened on December 21, 2006 on a timely appeal, filed October 5, 2006.

**II. PROGRAM PURPOSE:**

The Program entitled Child Care Services is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Child Care is a service, which offers direct care and protection of infants, preschool, and school age children during a portion of a twenty-four (24) hour day inside or outside of the child's home. The primary purpose of the program is to supplement the care and protection that the child receives from his parents. The primary goal of day care is to provide experiences to children, which will foster their healthy development, and to enable their parents to participate in work or educational activities.

**III. PARTICIPANTS:**

Grievant's witnesses:

\_\_\_\_\_, grievant

\_\_\_\_\_, co-grievant

Department's witnesses:

██████████ Child Care Supervisor, MountainHeart  
██████████ Case Manager, MountainHeart

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

#### **IV. QUESTIONS TO BE DECIDED:**

The question(s) to be decided is whether the Department was correct in their proposed action to cancel the grievant's childcare service agreement and to require a corrective action plan to continue their service agreement.

#### **V. APPLICABLE POLICY:**

Child Care Policy Chapter § 2.2.6 and 2.2.7.5

#### **VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

##### **Department's Exhibits:**

- D-1 July 2005, Letter from MountainHeart to Owner and Director \_\_\_\_\_.
- D-2 August 10, 2005 Child Care Provider Services Agreement
- D-3 June 17, 2006 letter to a parent from \_\_\_\_\_, (MICDC)
- D-4 June 2006 letter to all parents from \_\_\_\_\_
- D-5 August 25, 2006 notice to parents from \_\_\_\_\_
- D-6 July 3, 2006 letter from MountainHeart to \_\_\_\_\_
- D-7 September 1, 2006 from DHHR to \_\_\_\_\_, notice cancellation of service agreement
- D-8 September 12, 2006, Corrective Action Plan for \_\_\_\_\_
- D-9 Child Care Policy 2.2.6
- D-10 September 18, 2006 notice from \_\_\_\_\_ to MountainHeart
- D-11 September 14, 2006 notice from MH to \_\_\_\_\_ of Child Care Provider Service Agreement remains effective due to Corrective Action Plan.

##### **Claimant Exhibits:**

- C-1 Parent Handbook of rules and fees
- C-2 December 7, 2006 notice from DHHR to \_\_\_\_\_
- C-3 October 20, 2004 notice from \_\_\_\_\_ to MH parents
- C-4 August 2005 notice from \_\_\_\_\_ to all parents
- C-5 September 28, 2005 notice from \_\_\_\_\_ to MH parents
- C-6 Posting \_\_\_\_\_ had up for Summer Registrations
- C-7 September 9, 2006 letter from \_\_\_\_\_ to DHHR Ms. ██████████
- C-8 July 3, 2006 letter to \_\_\_\_\_ (Same as D-6)
- C-9 September 1, 2006 DHHR notice to MH parents

## **VII. FINDINGS OF FACT:**

- 1) The grievant and co-grievant are owners and operators of \_\_\_\_\_ (\_\_\_\_\_) which is a WV State licensed child care center that provides subsidized child care under a service agreement with the Department of Health and Human Resources (DHHR). In July 2005, the DHHR notified the grievants that they had obtained information regarding unallowable charges that were being made to parents who receive assistance from MountainHeart (D-1). MountainHeart is an agency under DHHR contract to administer the subsidized childcare program. On August 10, 2005, the grievants were asked to sign an updated service agreement (D-2) with the Department of Health and Human Resources (DHHR) to furnish child care services to children who have been certified and approved to receive subsidized child care through the DHHR. This agreement specifies that the provider agree to accept as payment for childcare services rendered the maximum amounts as established by the Agency.
- 2) \_\_\_\_\_ sent a notice to all MountainHeart parents on October 20, 2004 advising that they would no longer accept a child who does not attend at least 3X per week for full days. The notice states in part: "It is not feasible for us to have a full-time office worker to adjust those payments, track them, post them on the computer, send out notices, etc.....weekly. This helps to balance the payment we receive from the State and the workload we have for processing your claim(s)." (C-3)
- 3) In August 2005, \_\_\_\_\_ sent a notice of explanation of registration fees (C-4). This notice explains that two fees yearly would be charged for every child to keep everything fair and to counter costs incurred by the center.
- 4) On September 28, 2005 \_\_\_\_\_ sent a notice to all MountainHeart parents that the center would no longer be able to honor the MountainHeart contracts any for the before/after school program only, due to a conflict with hours they are open vs. State Regulations. (C-5)
- 5) On June 17, 2006 \_\_\_\_\_ responded in writing (D-3) to a parent who was upset over the additional registration fee for the summer. The letter explains that due to the changes in addresses, phones, contact persons etc. that they have to make corrections to the accounts twice a year. They further explained that they cannot do this efficiently on the \$3.00 per hour they charge for taking care of a child.
- 6) \_\_\_\_\_ issued a notice to all parents in June 2006 (D-4) to explain the two registration fees per year. This notice states in part, "With the high cost of EVERYTHING, including consumable supplies, and our continued low cost of tuitions, we have to do something to counter these costs.
- 7) MountainHeart sent a notice to \_\_\_\_\_ on July 3, 2006 (D-6) advising them that the new fees that were being imposed cannot be applied to parents who are on the state subsidy program. It explains that the provider service agreement and childcare policy allows for registration fees to be charged only one time and that the fees must be discussed with the parent prior to enrollment.

- 8) In August 2006, \_\_\_\_\_ notified parents that files needed to be updated and that a registration fee of \$35.00 must be paid by September 5<sup>th</sup> or the child would not be allowed to stay. (D-5)
- 9) On September 1, 2006, the DHHR sent a notice to \_\_\_\_\_ of cancellation of service agreement to be effective September 14, 2006 (D-7). This notice was mailed via certified mail. This notice advised that the action was being taken due to unallowable charges to the subsidy parents. The following day a notice was mailed to all MountainHeart parents who had children in \_\_\_\_\_ advising that the service agreement would end on September 14, 2006 (C-9).
- 10) On September 12, 2006, \_\_\_\_\_ entered into a corrective action plan (D-8) which allowed them to keep their service agreement active. This corrective action plan stipulates that the provider can charge a one-time only registration fee per child to be paid at initial registration with the center. It allows for another registration fee only if the child's contract is cancelled and then reinstated later.
- 11) The claimant's argue that childcare policy regarding registration fees is not clear. They explained that they were aware that the registration fee was to be billed once but explained that the policy does not say if that means once per year, or once per term, or just one time only. The claimant's made the decision to not accept the subsidized school age children any longer in their after school hours program due to the costs involved for the center in directors salaries and the task of prorating hours for approximately 100 subsidized children. The claimants stated that providing this after school care was not lucrative.
- 12) The claimant's believe that the Department treated them unfairly by notifying the parents at the same time they notified them of the plans to discontinue their service agreement. They stated that they were receiving phone calls from the parents before they were able to get their registered letter advising of the action. The claimants objected to the Department not supplying them with the names of the people who made complaints about them. They testified that the actions of the Department caused the center to loose lots of money as parents pulled their children out of the center. The claimants entered much testimony regarding the high costs of providing care to the subsidized children and how the state rate did not adequately provide for the care.
- 13) Child Care Policy 2.2.6  
Explanation of the payment rates available through the program and an explanation of allowable charges by the provider.  
Child Care Payment Rates Allowable charges by the provider shall be limited to:  
Reasonable registration fees, transportation fees, late fees and charges for time not approved by the agency. The provider shall inform the parent of these fees prior to enrollment. If the parent is responsible for paying a portion of the daily fee, the daily fee shall only be charged for days that the child is actually in care.
- 14) Child Care Policy 2.2.7  
An explanation of the parent's rights as a recipient of childcare services.  
The parent:

2.2.7.5 Has the right to have all provider fees disclosed prior to beginning services with the provider.

- 15) Child Care Policy 6.3.2.8 Part Day 2 less than 4 hours:  
Care provided at least 2 hours but not exceeding 3 hours 59 minutes per day. Part days submitted by the provider will be converted by FACTS to full days using the Part Day Conversion Chart.
- 16) Child Care Policy 6.3.2.9 Part Days Less than 2 hours:  
Care provided less than 2 hours per day. Payment will be one-third the amount paid for full childcare. These days will be converted to full days using the conversion chart.
- 17) Child Care Policy 8.2.3.2 Complaints regarding violation of or noncompliance with standards shall be investigated in the following manner.  
A. Although the identity of the complainant may be kept confidential, the Child Care Worker must tell the complainant that there is no guarantee of anonymity if the investigation results in a hearing or court action.  
G. At the end of the investigation, the Child Care Worker must determine, in an objective manner, if the complaint is substantiated, if other non-compliance areas are found, and if there are areas in which the provider needs technical assistance. The Child Care Worker shall discuss his/her findings with the provider at the completion of the investigation.  
H. The investigation is to be entered into FACTS and a corrective action plan completed if necessary.
18. WV State Code §49-2B charges DHHR with the responsibility to assure proper and appropriate childcare is given and maintained. It further grants the power to promulgate rules governing three types of childcare, establishes penalties for failure to comply with rules, sets conditions for regulation, and establishes requirements for supervision, monitoring and investigations.

## **VIII. CONCLUSIONS OF LAW:**

- 1) Policy 2.2.6 is not fully clear that registration fees are to only be charged once to a subsidized parent however; it is clear that the provider shall inform the parent of these fees prior to enrollment. Policy 2.2.7.5 is clear that the parent has the right to have all provider fees disclosed prior to beginning services with the provider. Based on the inclusive policy above, it is clear to this Hearing Officer that if registration fees are changed during the course of providing care to a child, then these changes could not have been disclosed prior to the parent beginning services with the provider. Exhibit D-1, D-2 and D-6 show that the Department was concerned about the additional registration fees being charged by the claimants and that these concerns were addressed to the claimants when an updated Service Agreement was signed on August 10, 2005.
- 2) WV State Code §49-2B grants the DHHR the power to promulgate rules governing childcare and to establish penalties for failure to comply with rules. Policy 2.2.6 provides that reasonable registration fees are allowed. While written policy is vague as

to what the Department considers to be reasonable, the Department has clearly made a determination in the corrective action plan, Exhibit D-8, that a one time only registration fee is a reasonable amount to charge for a child receiving subsidized childcare. I concur with the Department in this determination.

- 3) The Department is not at fault for their efforts in remedying the situation with this provider. The parents who were faced with a possible need to find another provider deserved to have ample notice as well as the provider who was faced with the loss of their service agreement with DHHR. The loss of income which this provider reports to have incurred is the result of a combination of issues which could include parents finding other providers due to the additional registration fees or due to the provider no longer accepting their school age child for after school care.

**IX. DECISION:**

It is the decision of this Hearing Officer to **uphold** the Agency in the process, which they followed to bring this Child Care center into compliance with Department policies and regulations.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 24th Day of January 2007.**

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**Sharon K. Yoho**  
**State Hearing Officer**