



March 26, 2025



RE: [REDACTED] v. WVDoHS-BFA  
ACTION NO.: 25-BOR-1353

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 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,

Eric L. Phillips  
State Hearing Officer  
Member, State Board of Review

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

cc: William Smalley, CCR&R

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

[REDACTED]

**Appellant,**

**v.**

**Action Number: 25-BOR-1353**

**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 [REDACTED]. 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 March 19, 2025, on an appeal filed February 10, 2025.

The matter before the Hearing Officer arises from the January 29, 2025 decision by the Respondent to terminate the Appellant's childcare subsidy benefits and seek repayment for previously issued subsidy payments.

At the hearing, the Respondent appeared by William Smalley, Case Manager, Connect Childcare Resource and Referral. The Appellant appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 Application for Child Care Services dated September 16, 2024
- D-2 West Virginia Secretary of State-Business and Licensing Online Data Services for [REDACTED]  
[REDACTED]
- D-3 Child Care Certificate dated September 16, 2024
- D-4 Request for Payment of Child Care Services for [REDACTED] dated  
October 16, 2024
- D-5 Electronic Mail Correspondence from Connect Child Care Resource and Referral
- D-6 Child Care Policy 7.2.6

- D-7 Electronic Mail Correspondence from [REDACTED] Connect Childcare Resource and Referral
- D-8 Notice of Closure dated January 29, 2025
- D-9 Child Care Benefit Repayment Agreement
- D-10 Notice of Repayment dated January 29, 2025
- D-11 Hearing Request dated February 10, 2025
- D-12 Child Care Parent Services Agreement dated September 16, 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) On September 16, 2024, the Appellant applied for childcare subsidy assistance through Connect Resource and Referral. (Exhibit D-1)
- 2) At application, the Appellant reported her self-employment operating her own childcare service, [REDACTED]. (Exhibit D-2)
- 3) The Appellant requested childcare subsidy for her own child with the [REDACTED]. (Exhibit D-1)
- 4) The Respondent approved childcare services for one child at a daily rate of \$34.00 for a maximum of 14 days per month, effective September 16, 2024. (Exhibit D-3)
- 5) The Appellant received childcare subsidy totaling \$2786.25 for a period of September 2024 through December 2024. (Exhibit D-4)
- 6) The Appellant provides private childcare services through her business for two private pay children three days a week. (Exhibit D-5)
- 7) The Respondent determined that the Appellant's private childcare self-employment was not a qualified activity for childcare subsidy assistance and terminated her eligibility. (Exhibit D-5)
- 8) On January 29, 2025, the Respondent issued a Notice of Closure which advised the Appellant that her childcare subsidy assistance was terminated effective January 24, 2025 because "you have failed to provide verification of a qualified activity and in violation of Child Care Subsidy policy 7.2.6.2: since the provider's own children are considered in the staff/child ratio in family child care homes and family child care facilities, family providers

and facility operators are not eligible for subsidized child care for their own children while they care for other children.” (Exhibit D-8)

- 9) On January 29, 2025, the Respondent issued a Notice of Repayment to the Appellant advising her of the overissuance of childcare subsidy assistance in the amount of \$2786.25 and that she must repay the overissuance or enter a repayment agreement by February 11, 2025. (Exhibit D-10)
- 10) The overissuance of childcare subsidy payments was due to a worker error.

### **APPLICABLE POLICY**

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual provides the following definitions:

1.1.41. Service Provider: Individuals who provide childcare or other types of service to individual recipients. Providers are not required to meet any service eligibility criteria.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 2.4.2.2 documents:

Child Care Parent Services Agreement: The case manager should discuss the terms of the Child Care Parent Services Agreement which includes information about the parent’s rights and responsibilities to maintain their eligibility and to the provider, as well as rules on using care appropriately to prevent improper payments. The parent and CCR&R case manager shall sign the agreement and a copy shall be given to the parent for their records.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 4.0 documents in part:

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.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 6.6 documents:

Any notification of negative action must be in writing on the Parent Notification Letter (DAY0177 or DAY-0179), including denial of an application and termination of services. The form letter shall include the specific negative action, with citation of specific policy and a description of any action, if applicable, on behalf of the client that resulted in the negative action. The original Notification

Letter (DAY-0177 or DAY-0179) shall be sent to the parent, with a copy saved to FACTS and, if a paper file is maintained, a copy is put in the correspondence block of the record. The negative action shall also be documented in the FACTS Contact screen. Most negative actions affecting the recipients of child care, other than denial of an application, cannot be taken until 13 calendar days after the client has been notified.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual  
7.1.1 defines a Family Child Care Home as:

Care may be provided in the caregiver's own home in one of three different types of homebased care.

7.1.2.1. Family Child Care Providers caring for four (4) to six (6) children must be registered.

7.1.2.2. Informal Family Child Care Providers who voluntarily register with the DHHR to care for three (3) or fewer children, at least one of whom is not related.

7.1.2.3. Relative Family Child Care Providers who voluntarily register with the DHHR and provide care only to children related to the caregiver. The caregiver must be a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual  
7.2.6.1:

Payment may not be made to a provider to care for their own children. Child care center owners, family child care homes and family child care facility owners are therefore not eligible for subsidized child care assistance when their child attends their parent's facility.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual  
7.2.6.2 documents:

Since the provider's own children are considered in the staff/child ratio in family child care homes and family child care facilities, family providers and facility operators are not eligible for subsidized child care for their own children while they care for other children. They also may not send their children to another caregiver in order to increase their own capacity.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual  
8.2.8 documents:

CCR&R case managers can implement a thirty-day penalty closure for clients who violate subsidy policy rules and responsibilities. If a parent fails to fulfill these responsibilities, the case manager shall give a written warning regarding specific problems, noting that subsequent abuses may result in a 30-day penalty closure.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 80 and 8.3.1 documents:

The Federal Improper Payments Act of 2002 has created special concern about improper payments and their recovery in all federally funded programs.

Improper payments due to worker error are defined as payments that should not have been made, or that were made in an incorrect amount due to worker error in determining and verifying eligibility, and/or calculation and input of information into the Family and Children's Tracking System (FACTS). Incorrect amounts include overpayments, underpayments, and inappropriate denials of payment.

West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 8.5 documents:

8.5.1. When an improper payment or misrepresentation of \$1000 or less is discovered, either to/by a client or provider, the CCR&R case manager should immediately notify the supervisor.

8.5.2. When willful misrepresentation is not clear, the CCR&R case manager will notify the CCR&R supervisor who will consult with the CCR&R Program Director, and together, make the decision to pursue repayment.

8.5.3. Supervisors are responsible for negotiating repayment schedules with providers and/or clients and completing a Repayment Agreement (ECE-CC-19) to include the amount to be recovered, the period of recovery, the monthly recovery amount, and the procedure for repayment. When a Child Care Benefit Repayment Agreement (ECE-CC-19) is entered into, the CCR&R shall send a copy of the completed and signed agreement to: Division of Accounting and Reporting Office of Operations WV DHHR Bureau for Children and Families 350 Capitol Street Suite 730 Charleston WV 25301-3711

8.5.4. If intentional misrepresentation may have occurred and the provider/client remains active, it is recommended that the CCR&R case manager try to collect the payment in full. If this is not feasible, it is suggested that the CCR&R case manager request that the client or provider be asked to repay the amount in monthly installment payments of approximately 10% of the amount due.

8.5.5. Payment schedules should be sufficient to recover the amount due within a reasonable time period but should not pose an undue hardship on a client. The

amount of payment should not exceed living costs. Payments must be made by money order.

8.5.6. When a check needs to be cancelled or an overpayment/repayment submitted, the CCR&R agency shall submit the payment/check and form (ECE-CC-68) to the closest DHHR District Office.

8.5.7. If a payment is more than forty-five (45) days late (15 days past the due date), the entire unpaid balance becomes due and must be paid in full. Failure to repay the requested amount shall result in case closure for clients or denial of participation in the certificate system for child care providers. Client services will not be reinstated until full payment is received.

## West Virginia Department of Human Services Child Care Subsidy Policies and Procedures Manual 11.2 documents:

Adequate notice of a decision affecting benefits shall be mailed or provided in writing in a face-to-face contact, to the applicant. Notice shall be mailed at least thirteen (13) days before the effective date of any action or decision which may be adverse to the applicant.

11.2.1. Required Notice Information. The notice must include the following information:

11.2.1.1. The action or proposed action to be taken.

11.2.1.2. The reasons for the action provided in terms readily understandable by the applicant.

11.2.1.3. Citation of relevant policy sections supporting the action taken or proposed.

11.2.2. Exceptions to Thirteen (13) Day Notice. There are certain exceptions to the 13-day notice.

11.2.2.1. When a mass change is initiated, i.e., changes in provider reimbursement levels or income eligibility levels, a 13-day notice is not necessary.

11.2.2.2. When the fee is increased as a result of redetermination. A fee increase is not considered a negative action. The client's status has changed based upon his or her increase in income, but the benefit of child care is not being eliminated. If clients return their status check after the due date but before the closure date, the case manager is to process the review. (See section 6.1.2) The case manager will not be able to give 13 days' notice regarding the increased fee. However, the CCR&R case manager must inform the provider and client of the date the fee increase takes place.

11.2.2.3. When there is a safety concern. In certain situations, such as allegations of serious child abuse or massive structural damage to the child

care home, immediate closure may be necessary to protect the health and safety of the children.

## **DISCUSSION**

The Respondent terminated the Appellant's eligibility for childcare subsidy assistance when it was determined that the Appellant was receiving subsidized childcare for her own children while she was providing childcare for privately paying individuals. Additionally, the Respondent seeks repayment of the overissuance of childcare subsidy assistance in the amount of \$2786.25 for a period of September 2024 through December 2024. The Appellant appeals the Respondent's decision. The Respondent must prove by a preponderance of the evidence that it was correct in its decision to terminate the Appellant's eligibility for childcare subsidy assistance and to seek repayment of overissued subsidy assistance.

On September 16, 2024, the Appellant applied for childcare subsidy assistance for one child at the [REDACTED]. With the application, the Appellant provided documentation of her sole-proprietorship business of [REDACTED]. (Exhibit D-2) The Respondent approved the Appellant's application and issued a childcare certificate (Exhibit D-3) on the same date. The Respondent admitted that the Appellant's application was approved in error and later terminated the Appellant's eligibility for subsidized childcare assistance for violating Child Care Subsidy Policies and Procedures Manual 7.2.6.2. Through an internal audit, the Respondent determined that the Appellant was providing childcare for privately paying customers while receiving the subsidized childcare. The Respondent determined that the Appellant's self-employment did not qualify as a participating activity to receive childcare subsidy assistance and alleged that the Appellant's business operation may be in violation of the agency's regulatory rules pertaining to state childcare providers. Based on this discovery, the Respondent issued notice (Exhibit D-8) to the Appellant on January 29, 2025, informing her of the termination of her subsidized childcare effective January 24, 2025 due to her failure "to provide verification of a qualifying activity" and citing the aforementioned policy. By additional notice on January 29, 2025, the Respondent sought the repayment of the overissuance of childcare subsidy assistance payments in the amount of \$2786.25 for the time period of September 2024 through December 2025.

The Appellant contends that she should not be responsible for the overissuance of childcare subsidies because of the agency error. The Appellant testified that she was unaware of the regulations which would require her to register as a licensed childcare provider and indicated that she only provides babysitting services and is not interested in having a childcare facility. The Appellant indicated that her ineligibility for subsidized childcare creates a burden on her family because she would be unable to work due to having to provide care for her child.

***Eligibility***-The Respondent contends that the Appellant was ineligible for childcare subsidy payments because she provided childcare for privately paying customers. The Respondent based their argument on West Virginia Department of Human Services Childcare Subsidy Policies and Procedures Manuals 7.2.6.2 which dictates that a provider's own children are considered in the staff/child ratio for family childcare homes and such providers are not eligible for subsidized childcare for their own children while providing care for other children. Furthermore, recipients



of subsidized childcare must demonstrate a need for care. Governing policy dictates 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. Based on testimony provided during the hearing, it is reasonable to assume that the Appellant could have provided care for her own two-year-old child while providing childcare services for privately paying individuals. Because regulations prevent providers from receiving subsidized childcare for their own children while providing care for other children, the Respondent's decision to terminate the Appellant's eligibility is affirmed.

**Notice-**Governing policy requires adequate notice of a decision which adversely affects the recipient be mailed at least thirteen days before the effective date of action. At minimum, the notice requires documentation of the action, reasons for the action, and a citation of relevant policy. On January 29, 2025, the Respondent informed the Appellant of the termination of her eligibility for subsidized childcare effective January 24, 2025. While the notice contained the reasons for termination and a citation of policy, the notice was in violation of governing policy because it failed to provide thirteen days of advance notice of action. Based on an evidentiary review, the Respondent incorrectly notified the Appellant of the termination of benefits; however, this error has no affect on the Appellant's eligibility for subsidized childcare.

**Repayment-**The Appellant contends that she should not be financially responsible for the overissuance of the subsidized childcare for the timeframe of September 2024 through December 2024 due to the worker error. Federal regulations require the recoupment of improper payments for all federally funded programs. An overissuance subject to recovery includes improper payments of misrepresentation on the part of the parent or provider; worker error in determining eligibility, authorizing, or paying for care; and programmatic infractions by parents or providers. While the Appellant provided information to document her self-employment at application, the Respondent did not verify her type of work activity prior to the approval of her application of benefits which created the approval of improper benefits. Because improper benefits issued due to worker error are subject to recovery, the Respondent was correct in its decision to seek recoupment of subsidized childcare benefits issued from September 2024 through December 2024.

Based on an evidentiary review, the Respondent's decision to terminate and seek recoupment of subsidized childcare assistance is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Recipients of subsidized childcare assistance must participate in a qualifying activity that prevents them from providing care and supervision of the children in the household during the time the parent is participating in the activity.
- 2) Policy requires that family providers of childcare are not eligible for subsidized childcare for their own children while they care for other children.

- 3) The Appellant received subsidized childcare assistance while providing childcare for private pay customers; therefore, the Appellant was ineligible for subsidized childcare assistance.
- 4) The Appellant's self-employment of private pay childcare was not a qualifying activity which prevented the care and supervision of her own children.
- 5) Policy requires notice of at least thirteen days before the effective date of any action which adversely affects the applicant.
- 6) The Respondent failed to provide proper notice of adverse action to the Appellant.
- 7) Policy requires the recoupment of all overissued benefits due to recipient of improper benefits. Improper benefits related to worker error are defined as payments that should not have been made, or that were made in an incorrect amount due to worker error in determining and verifying eligibility, and/or calculation and input of information.
- 8) The Appellant's application was approved due to worker error and the Appellant received improper childcare subsidy benefits. The Appellant is required to repay those benefits incorrectly approved for the time period of September 2024 through December 2024.

### **DECISION**

It is the decision of the State Hearing Officer to uphold the Respondent's decision to terminate and seek recoupment of overissued childcare subsidy benefits from the time period of September 2024 through December 2024.

**ENTERED this \_\_\_\_\_ day of March 2025.**

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Eric L. Phillips  
**State Hearing Officer**