



March 26, 2026

RE: [REDACTED] v. WV DoHS/BFA
ACTION NO.: 26-BOR-1185

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 (DoHS). 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,

Tara B. Thompson, MLS
Certified State Hearing Officer
Member, State Board of Review

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

cc: Allison Manning, Child Care Resource Center
Brittany Lucci, Child Care Resource Center

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

[REDACTED]
Appellant,

v.

Action Number: 26-BOR-1185

**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 17, 2026.

The matter before the Hearing Officer arises from the Respondent's decision in December 2025, to limit payment for child care services received by Child [REDACTED] before and after Pre-K, to days specified on the Appellant's *Child Care Certificate*.

At the hearing, the Respondent appeared by Allison Manning, Child Care Resource Center (CCRC). Appearing as witnesses for the Respondent were Brittany Lucci, CCRC; and Denise Richmond, Division of Early Care and Education. The Appellant appeared and was self-represented. Appearing as a witness for the Appellant was [REDACTED].

[REDACTED] All witnesses were placed under oath, and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Child Care Resource & Referral Memorandum
- D-2 Child Care Parent Notification Letter Notice of Denial or Closure, Form CC-0170
- D-3 Provider Notification Letter, Form CC-0613
- D-4 Decree of Divorce, Family Court of [REDACTED] County, West Virginia
- D-5 Provider Notification Letter, Form CC-0613
- D-6 Child Care Certificate, issued March 18, 2025
- D-7 Email Correspondence
- D-8 CCRC Notice, dated July 9, 2025
- D-9 Child Care Subsidy Policy § 4.10

- D-10 CCRC Notice, dated February 12, 2026
- D-11 Child Care Certificate, issued February 12, 2026
- D-12 Email Correspondence
- D-13 Child Care Parent Services Agreement, signed February 22, 2024

Appellant's Exhibits:

- A-1 45 CFR § 98.56 excerpts
- A-2 West Virginia Code of State Rules § 126-28-19 excerpts
- A-3 West Virginia Child Care Subsidy Policy & Procedures Manual excerpts

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 a recipient of child care subsidy benefits for four-year-old Child [REDACTED]
- 2) Child [REDACTED] attends Pre-K and daycare at [REDACTED] five days per week. Pre-K hours are 7:45 a.m. through 2:15 p.m.
- 3) On February 2, 2024, the Appellant signed a *Child Care Parent Services Agreement* that she agreed to all conditions within the *Child Care Certificate* regarding use of care for only pre-approved times, including agreeing to notify the Agency of changes in activity status (Exhibit D-13).
- 4) On March 10, 2025, the Appellant's child care case record (Case [REDACTED] was transferred to [REDACTED] County, and the Respondent issued a *Notice* advising the Appellant's provider, [REDACTED], that the Appellant was ineligible for a child care certificate, effective March 23, 2025 (Exhibits D-1 and D-3).
- 5) On March 11, 2025, the Respondent issued a *Notice* advising the Appellant must submit a copy of her divorce decree and updated proof of residence by March 23, 2025, or her case would close on that date (Exhibit D-2).
- 6) On March 19, 2025, the Respondent issued a *Notice* advising [REDACTED] that the Appellant was approved for a *Child Care Certificate* to cover the cost of child care for Child [REDACTED] beginning on March 1, 2025 (Exhibit D-5).
- 7) The *Child Care Certificate*, Section IV provides:
The children listed below are eligible for payment for the number of hours and days indicated below. Payment shall not be made for times in excess of this authorization nor for services not rendered by the provider nor required by the parent(s). Payment for school-age

children is limited to before and after school, sick days, school holidays, snow days, or summer break (Exhibits D-6 and D-11).

- 8) From March 1, 2025, through February 28, 2026, Child [REDACTED] was approved for child care benefits up to ten hours per day, five days per week, and 23 days per month. Specifically, care was approved while the Appellant worked “varying shifts on Mondays, 8:00 a.m. to 5:00 p.m. Thursdays, and Fridays” while Child [REDACTED] was in the Appellant’s care (Exhibits D-5 and D-6).
- 9) The *Child Care Certificate*, Section VI provides: “If [REDACTED] is using care, a private payment arrangement should be made” (Exhibit D-6).
- 10) On April 11, 2024, the final *Order* in the Appellant’s divorce was filed by the Clerk of the Family Court of [REDACTED] County, West Virginia (Exhibit D-4).
- 11) The Appellant and [REDACTED] share custody of Child [REDACTED]
- 12) The *Divorce Decree* stipulates that parenting is shared jointly as outlined in the *Parenting Plan*.
- 13) The *Parenting Plan* specifies that the Child [REDACTED] resides with the Appellant from Wednesday at 5:30 p.m. through Friday at 5:30 p.m. (Exhibit D-4).
- 14) The *Parenting Plan* specifies that Child [REDACTED] resides with the Appellant on alternating weeks from Wednesday at 5:30 p.m. through Monday at 5:30 p.m. (Exhibit D-4).
- 15) The *Parenting Plan* specifies that Child [REDACTED] resides with [REDACTED] on from Monday at 5:30 p.m. through Wednesday at 5:30 p.m. (Exhibit D-4).
- 16) The *Parenting Plan* specifies that Child [REDACTED] resides with [REDACTED] on alternating weeks from Friday at 5:30 p.m. through Wednesday at 5:30 p.m. (Exhibit D-4).
- 17) The *Parenting Plan* stipulates that weekday transfers of Child [REDACTED] occur at “Daycare” at 5:30 p.m. (Exhibit D-4).
- 18) The *Parenting Plan* provides that proposals for handling non-emergency changes in *Parenting Plan* arrangements may be made by telephone call to the other parent, and stipulates that the parent requesting the change will be responsible for any additional child care or transportation costs caused by the change (Exhibit D-4).
- 19) On June 23, 2025, the Respondent, by Ariel Cogar (hereafter Ms. Cogar), CCRC, emailed [REDACTED] that, “all joint custody cases are eligible for bill by actual days of attendance only” (Exhibit D-7).
- 20) On June 23, 2025, [REDACTED] emailed Ms. Cogar that “the father does not use care nor does he ever drop off or pick up” (Exhibit D-7).

- 21) On July 9, 2025, and on February 12, 2026, the Respondent issued a *Notice* to the provider advising that Child [REDACTED] was a joint custody case and that the provider was “not eligible to claim billable days for this child,” “may only bill actual days of attendance,” and “must submit attendance sheets each month” with billing. The provider was informed that separate attendance sheets must be kept for each parent (Exhibit D-8).
- 22) The Respondent did not deny payment of child care services supplied to Child [REDACTED] through December 2025.
- 23) Because the Appellant properly reported her joint custody arrangement, the Respondent made an agency error by applying the child care subsidy to pay for child care services to Child [REDACTED] during parenting time with the non-subsidy client, from March through December 2025.
- 24) The Respondent did not seek reimbursement for child care subsidy payments made due to the agency’s error from March through December 2025.
- 25) The Appellant did not report changes to the *Parenting Plan* or need for care to the Respondent.
- 26) On January 5, 2026, the United States Department of Health and Human Services (U.S. DHHS) published a *Notice of Proposed Rulemaking* in the Federal Register. The U.S. DHHS Administration for Children and Families proposed amending the Child Care and Development Fund (CCDF) regulations at 45 CFR part 98. Proposed amendments include rescinding the 45 CFR § 98.45(m)(2) requirement to pay providers based on the child’s enrollment.
- 27) If finalized, the proposed rule becomes effective 60 days from the date of publication of the final rule.
- 28) As of the date of the hearing, the proposed rule has not been finalized.
- 29) On January 29, 2026, the Respondent emailed the Appellant advising, “Since December of 2024, all joint custody cases are eligible for bill by actual days of attendance only. This was a policy put into place by federal rules and implemented by ECE...” (Exhibit D-12).
- 30) In February 2026, the Appellant completed her child care eligibility review and updated her parenting time and work hours (Exhibit D-12).
- 31) On February 12, 2026, a new *Child Care Certificate* was issued providing that Child [REDACTED] was approved for child care benefits up to ten hours per day, three days per week, and 15 days per month. Specifically, care was approved while Child [REDACTED] was in the Appellant’s custody and the Appellant was working on Mondays from 3:00 p.m. to 7:00 p.m., Thursdays from 8:00 a.m. through 4:30 p.m., and on Fridays from 8:00 a.m. to 3:00 p.m. (Exhibit D-11).
- 32) The *Child Care Certificate* was effective March 1, 2026 through February 28, 2027 (Exhibit D-11).

APPLICABLE POLICY

Code of Federal Regulations 45 CFR § 98.2 Definitions provide that:

Child care certificate means a certificate that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services ... For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider.

Child care services means the care given to an eligible child by an eligible child care provider.

Eligible child means an individual who meets the requirements of § 98.20.

Code of Federal Regulations 45 CFR § 98.20(a) A child's eligibility for child care services provides that to be eligible for services under § 98.50, a child shall, at the time of the eligibility determination or redetermination:

- (1) (i) Be under 13 years of age; ...
- (2) (i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and
(ii) Whose family assets do not exceed \$1,000,000 (as certified by such family member); and
- (3) (i) Reside with a parent or parents who are working or attending a job training or educational program; ...

Code of Federal Regulations 45 CFR §§ 98.11(a) and (b) Administration Under Contracts and Agreement provides that the Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In retaining overall responsibility for the administration of the program, the Lead Agency shall:

- (1) Determine the basic usage and priorities for the expenditure of CCDF funds;
- (2) Promulgate all rules and regulations governing overall administration of the Plan; ...
- (5) Oversee the expenditure of funds by subrecipients and contractors ...;
- (6) Monitor programs and services; ...
- (8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

Code of Federal Regulations 45 CFR § 98.14(a) Plan Process provides that the Lead Agency shall:

- (1) Coordinate the provision of child care services funded under this part with other Federal, State, and local child care and early childhood development programs ... to expand accessibility and continuity of care as well as full-day services.

Code of Federal Regulations 45 CFR § 98.21(h) provides that the Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month eligibility period, and describe efforts to ensure such requirements do not place an undue burden on eligible families that could impact continued eligibility between redeterminations

(2) Any additional requirements the Lead Agency chooses, at its option, to impose on parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

- (i) Limit notification requirements to items that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;
- (ii) Not require an office visit in order to fulfill notification requirements; and
- (iii) Offer a range of notification options (e.g., phone, email, online forms, extended submission hours) to accommodate the needs of parents; ...

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

- (i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

Code of Federal Regulations 45 CFR §§ 98.45(m)(2)(i)-(ii) provides that: The Lead agency shall demonstrate that it has established payment practices applicable to all CCDF child care providers that reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency can demonstrate that such practices are not generally-accepted for a type of child care setting): Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absence by: **basing payment on a child's authorized enrollment** [emphasis added]; or an alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

West Virginia Code of State Rules § 126-28-19 Finance provides:

19.1 Each county board of education shall enroll WV Pre-K children in community classrooms and generate funding through the school aid funding formula

19.2 The county board of education shall provide sufficient assistance/funding to a collaborative community partner to enable the partner to offer services that meet this policy at no cost to parents and at no deficit to the program

19.3 WV Pre-K classrooms that provide services to eligible children who can be counted in the school aid funding formula must provide those services at no cost to the parent/guardian of the

children. Support for community programs to offer free public education shall be a part of the contract between the community partner and county board of education.

19.3.a In child care, WV Pre-K is an enhancement to the regular program during the designated WV Pre-K hours. Since WV Pre-K under this policy is part of a free public education, parents/guardians shall only be charged for those hours outside the WV Pre-K designated time.

WV Child Care Subsidy Policy § 2.5.4 *Parent Responsibilities* provides that as a recipient of child care services, the parent has the following responsibilities:

2.5.4.4 Discussing with the provider any custody or visitation issues and providing names of people allowed to pick up the child(ren).

2.5.4.8 Making private arrangements with the provider for payment if care is used for reasons and times not needed or not listed on the *Certificate*. The Agency will not pay for child care provided while parents attend medical appointments, go shopping, or participate in other non-work or school related activities.

WV Child Care Subsidy Policy § 4.0 *Need for Child Care* provides that 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.

WV Child Care Subsidy Policy § 5.1 *Family Size* provides that 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:

5.1.4 *Head of Household* provides that the head of household may be a natural parent, step-parent, or an individual acting in loco parentis, ... with or without legal custody.

WV Child Care Subsidy Policy §§ 2.0 through 2.1 *Application Overview, Face-to-Face Application* provides that any parent who wishes to request child care services may apply by contacting the local Child Care Resource and Referral (CCR&R) agency. The applicant, or parent/head of household, must have custody of the child(ren) or reside with the child(ren).

WV Child Care Subsidy Policy § 6.0 *Client Case Management Overview* provides that it is the responsibility of the CCR&R agency to maintain an eligible case load by having continued contacts with families, reviewing the case record as needed, and comparing the case record to provider payment requests as needed ... Once deemed eligible, the child shall receive services “at least at the same level” for the duration of the eligibility period. This means that the benefit cannot be reduced during the twelve-month period. If the parent reports changes within the eligibility period that would increase the family’s benefit, the case manager must reassess the case and make the appropriate increase in the family’s benefit.

WV Child Care Subsidy Policy § 6.3 *Changes in Days and/or Hours of Care During the Certificate Period* provides that clients may need to request changes to their days and/or hours of care during the certificate period. These changes should not move the recertification date of the certificate or increase the child care fee. To increase or decrease the hours on the child care certificate, the case manager will need to do a new assessment in PATH.

WV Child Care Subsidy Policy § 6.3.1 provides that the client should submit documentation of the need for schedule change.

DISCUSSION

The Appellant received child care benefits for Child [REDACTED] during the March 2025 through February 2026 certification period. From March through December 2025, the Respondent submitted child care subsidy payment for all days that Child [REDACTED] received child care before and after Pre-K hours, regardless of which parent Child [REDACTED] resided with each day. In December 2025, the Respondent implemented a change in payment practices that reflected child care subsidy reimbursement for child care provided for Child [REDACTED] only on days that Child [REDACTED] resided with the Appellant.

A fair hearing request was submitted by the Appellant to contest the change. The Appellant contended that all child care received by Child [REDACTED] before and after Pre-K should be covered by the child care subsidy program. During the hearing, the Appellant's witness testified that she was unable to identify any state or federal regulations that required the Respondent to issue child subsidy payments pursuant to the child custody agreement. Further, the Appellant argued that she should have been notified of the Respondent's decision to change payment practices after December 2025.

During the hearing, the Respondent stipulated that after the Appellant verified the joint custody agreement, an agency error occurred by the agency's continued payment for all child care services provided to Child [REDACTED] regardless of which parent she resided with, through December 2025. The Respondent's witness further testified that because an agency error resulted in the overpayment, the Respondent did not seek repayment of child subsidy payments made due to the agency's error. During the hearing, the Respondent's representative testified that the discovery was made because of altering the agency's payment processes to align with a federal policy which required billing to be based on attendance rather than enrollment.

To prove that the Respondent correctly shifted payment practices after December 2025 to correspond with days Child [REDACTED] attended child care before or after Pre-K, and resided with the Appellant, the Respondent had to demonstrate by a preponderance of evidence that the controlling regulations precluded Child [REDACTED] child care benefits from being utilized on days she attended child care before or after Pre-K when residing with [REDACTED]. Further, the evidence must demonstrate that advanced notice was not required before altering payment practices for care provided to Child [REDACTED].

Federal regulations provide at 45 CFR § 98.11, that the Respondent has broad authority to administer the program, including the authority to determine the basic usage for expenditures of CCDF funds, and the promulgation of rules to govern the administration of the program.

Child Care Subsidy Payment Based on Custody Agreement

During the hearing, the Appellant testified that Child █████ attends █████ five days per week. The Appellant argued that the *Child Care Certificate* approved Child █████ for child care 23 days per month, and contended that because the Respondent was required to coordinate child care services with the Division of Early Care and Education, that all care provided to Child █████ before and after school should be covered on days that Child █████ attended Pre-K. During the hearing, the Appellant argued that the child care subsidy should cover all the days that child █████ receives child care, so that the center can remain open.

The Respondent's representative testified that the Appellant's child care subsidy can only provide payment for child care used by the Appellant for care provided to Child █████ before and after Pre-K. Pursuant to testimony and regulations, Pre-K is funded through the school aid funding formula and is provided at no cost to the parent of the child. Therefore, Pre-K hours are not billable to the child subsidy program. According to the state regulations, parents shall only be charged for child care hours outside the WV Pre-K designated time. The Appellant's witness did not dispute that proper payment was made for Child █████ Pre-K attendance. Testimony provided by the parties established that Pre-K hours were 7:45 a.m. through 2:15 p.m.

There is no policy in the agency's manual regarding payment practices for joint custody situations in which one parent is a subsidy client and the other is not. As the agency's policy is silent on this issue, the federal regulations were reviewed when making this decision. Although specific policy sections do not address responsibility for child care costs in the instance of joint custody where one parent is a subsidy client and the other is not, the regulations mandate that to be eligible for the child care subsidy, the child must reside with a family who meets financial eligibility and need for care requirements. Families that wish to use the child care subsidy must apply according to the procedures provided in the policy and regulations. According to the policy, the parent must have custody of the child or reside with the child. As the Appellant submitted the *Divorce Decree* and *Parenting Plan* to verify the custody and residence arrangements of Child █████, the controlling court order must be considered when determining the child's residence.

Pursuant to the court-ordered *Parenting Plan*, Child █████ resides with the Appellant from Wednesday at 5:30 p.m. through Friday at 5:30 p.m.; and stipulates that on alternating weeks, Child █████ resides with the Appellant from Wednesday at 5:30 p.m. through Monday at 5:30 p.m. According to this schedule, the Appellant was responsible for child care costs on Thursday and Friday each week and alternated weekly responsibility for Monday child care costs.

The court-ordered *Parenting Plan* stipulates that Child █████ resides with █████ from Monday at 5:30 p.m. through Wednesday at 5:30 p.m.; and that on alternating weeks, Child █████ resides with █████ from Friday at 5:30 p.m. through Wednesday at 5:30 p.m. According to this scheduling, █████ was responsible for child care costs on Tuesday and Wednesday each week and alternated weekly responsibility for Monday child care costs.

Pursuant to the *Parenting Plan*, the *Child Care Certificate* correctly approved child care payments for Child [REDACTED] on Monday, Thursday, and Friday, which were the days the child resided with the Appellant.

During the hearing, the Appellant testified that she and [REDACTED] do not follow the parenting plan strictly and that the parenting time has “changed a bit.” The Appellant testified that she always has Child [REDACTED] on Wednesday and Thursday afternoons until Monday when she drops Child [REDACTED] off at school and argued that Wednesdays should always be covered by the child subsidy. During the hearing, the Appellant testified that sometimes she picks up Child [REDACTED] during [REDACTED] parenting hours and argued those days should be covered by her child care subsidy. The Appellant testified that [REDACTED] only uses the Pre-K hours.

According to the *Parenting Plan*, non-emergency changes to the plan may be arranged with the other parent by telephone. Pursuant to the *Parenting Plan*, the parent requesting the change will be responsible for any additional child care or transportation costs caused by the change. According to this stipulation, the Appellant would be responsible for any child care costs incurred because of her request to change the parenting schedule. As such, for subsidy payment coverage of additional child care costs, the Appellant is responsible for reporting the change and must demonstrate a need for care for each instance additional child care costs are incurred.

During the hearing, the Respondent’s representative testified that if the Appellant had reported the change in parenting time, they could have adjusted the child care certificate to reflect the new parenting schedule. Federal regulations permit the agency to implement requirements for the family to report changes of circumstances that impact a family’s eligibility or enable the agency to pay providers. Agency policy provides that if the parent reports changes within the eligibility period that would increase the family’s benefit, the case manager must reassess the case and make the appropriate increase in the family’s benefit. According to the Respondent’s policy, the client should submit documentation of the need for a schedule change.

Although she acknowledged on the *Child Care Parent Services Agreement* that she must report all changes in her activity status, the Appellant testified that she did not update the Respondent that she was not following the parenting plan. The Appellant’s testimony affirmed that her child care has not been affected and testified that she did not notify the Respondent of the change in parenting time because it was just an agreement between her and Trent Williston. She testified that changes were made based on what made the most sense for them.

To demonstrate a need for care, the head of household must be involved in a qualifying activity that prevents the parent from providing care and supervision of the child in the household at the time the parent is participating in the activity. The Appellant did not dispute that the *Child Care Certificate* reflected the work hours she reported to the Respondent when her *Certificate* was approved.

Pursuant to the submitted evidence, the Appellant did not contact the Respondent via phone, email, or in-person to notify the Respondent of changes in the days Child [REDACTED] resided with the Appellant or of changes to her work schedule, which would have enabled the Respondent to ensure proper payment to the child care provider.

Because the controlling policies and regulations require residence and custody to be verified when approving child care subsidy eligibility, the Respondent correctly relied upon the *Parenting Plan* when determining Child ██████ eligibility for child care benefits while residing with the Appellant from March 2025 through February 2026. According to the submitted evidence, because changes in the Appellant's need for care were not reported to the Respondent during the certification period, the Respondent was required to issue subsidy payment according to the days specified on the March 2025 *Child Care Certificate*. Therefore, child care subsidy payment cannot be made for care provided to Child ██████ before or after Pre-K on days beyond those established on the March 2025 *Child Care Certificate*.

On February 12, 2026, a new *Child Care Certificate* was issued providing approval for child care benefits for Child ██████ up to ten hours per day, three days per week, and 15 days per month. Specifically, care was approved while Child ██████ is in the Appellant's custody while the Appellant works on Mondays from 3:00 p.m. to 7:00 p.m., Thursdays from 8:00 a.m. to 4:30 p.m., and on Fridays from 8:00 a.m. to 3:00 p.m. There is no dispute regarding the Appellant's new *Child Care Certificate*, only argument regarding child care subsidy coverage provided to Child ██████ before and after Pre-K on days she resides with ██████████ Pursuant to the policy and regulations, child care subsidy payment can only be supplied for child care provided to Child ██████ during the days she resides with the Appellant and that the Appellant has verified her need for care.

Child Care Subsidy Payment Based on Attendance, Not Enrollment

During the hearing, the Respondent's representative testified that notification to the Appellant's provider went out in December 2025 because of a federal policy change and an internal case review. The submitted evidence revealed correspondence between the Respondent and the provider regarding billing for child care services based on attendance rather than enrollment. According to the Respondent's correspondence, the Respondent's worker asserted that since December 2024, joint custody cases are eligible for payment by actual days of attendance only. During the hearing, the Respondent did not supply a regulation to support this assertion.

As the March 2024 federal regulations require provider payments to be based on enrollment, the Respondent's application of this policy appears to be erroneous. Although the Respondent argued the December 2025 shift to attendance-based billing was contingent upon federal regulations, this action appears to be premature as the proposed federal rule change has not yet been made final. Pursuant to the current regulations at 45 CFR § 98.45(m)(2), the agency's payment practices must delink provider payments from a child's occasional absence by basing payment on a child's authorized enrollment, not by basing payment on a child's actual attendance.

Regardless of the proposed changes to the overarching enrollment/attendance-based federal rules, because the federal regulations in effect stipulate that child care billing is contingent upon enrollment, not attendance, the Respondent must honor payment for child care services provided for Child ██████ consistent with the enrollment approved on the *Child Care Certificate*.

Denial of Payment

During the hearing the Respondent stipulated that child care services were fully paid for Child ██████ until December 2025, when the Respondent began enforcing non-payment for child care

services provided to Child [REDACTED] on days that she was picked up or dropped off by her father, who was a non-childcare subsidy client.

The Appellant's witness testified that she did not know how many days she submitted billing for Child [REDACTED] care and could not state whether any specific days were denied child subsidy payment. [REDACTED] testified that she has not charged the Appellant or [REDACTED] anything but the daily fee. During the hearing, neither party could identify specific dates that child care benefits were not paid for care that Child [REDACTED] received before or after Pre-K hours.

As neither party could report specific days for which payment was denied for child care services, the preponderance of evidence failed to prove that payment was not made for child care services provided to Child [REDACTED] before or after Pre-K, during the enrollment period approved on the *Child Care Certificate*, on days that Child [REDACTED] resides with the Appellant.

Notification

During the hearing, the Respondent testified that a notice was not issued to the Appellant advising her of the correction of billing procedures because no adverse action or reduction of benefit occurred with the Appellant's benefits because she was receiving services as indicated on her *Child Care Certificate*.

Pursuant to the policy, once deemed eligible, Child [REDACTED] must receive services "at least at the same level" for the duration of the eligibility period. The preponderance of evidence verified that the child care subsidy coverage provided for Child [REDACTED] exceeded the level she was eligible to receive as the subsidy paid for child care provided beyond the days that Child [REDACTED] resided with the Appellant from March through December 2025.

As the Appellant continued to receive the services she was entitled to during the certification period, the Respondent's decision to correct the agency's overpayment error did not constitute a negative action to the Appellant's child care benefits. Therefore, no additional notification was required.

CONCLUSIONS OF LAW

- 1) To be eligible for the child care subsidy, the child must reside with a family who meets financial eligibility and need for care requirements. According to the policy, the parent must have custody of the child or reside with the child.
- 2) The preponderance of evidence revealed that the Respondent correctly relied on the Appellant's *Divorce Decree* and *Parenting Plan* when verifying the custody and residence arrangements of Child [REDACTED]
- 3) Pursuant to the *Parenting Plan*, the *Child Care Certificate* correctly approved child care payments for Child [REDACTED] on days the child resided with the Appellant.

- 4) If the parent reports changes within the eligibility period that would increase the family's benefit, the case manager must reassess the case and make an appropriate increase in the family's benefit.
- 5) The preponderance of evidence revealed that the Appellant did not notify the Respondent of changes to her parenting time or need for care.
- 6) Because changes in the Appellant's need for care were not reported to the Respondent during the certification period, the Respondent was required to issue subsidy payment according to the days specified on the *Child Care Certificate*.
- 7) The agency's payment practices must delink provider payments from a child's occasional absence by basing payment on a child's authorized enrollment, not by basing payment on a child's actual attendance.
- 8) Because the federal regulations in effect stipulate that child care billing is contingent upon enrollment, not attendance, the Respondent must honor payment for child care services provided for Child [REDACTED], consistent with the enrollment approved on the *Child Care Certificate*.
- 9) The preponderance of evidence failed to identify any specific dates that child care benefits were not paid for care Child [REDACTED] received before or after Pre-K hours during the enrollment period approved on the *Child Care Certificate*, on days that Child [REDACTED] resides with the Appellant.
- 10) Once deemed eligible, Child [REDACTED] must receive services "at least at the same level" for the duration of the eligibility period.
- 11) The preponderance of evidence verified that the child care subsidy coverage provided for Child [REDACTED] exceeded the level she was eligible to receive as the subsidy paid for child care provided beyond the days that Child [REDACTED] resided with the Appellant from March through December 2025.
- 12) As the Appellant continued to receive the services she was entitled to during the certification period, the Respondent's decision to correct the agency's overpayment error did not constitute a negative action to the Appellant's child care benefits. Therefore, no additional notification was required.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to limit payment for child care services received by Child [REDACTED] before and after Pre-K, to days specified on the Appellant's *Child Care Certificate*.

ENTERED this 26th day of March 2025.

Tara B. Thompson, MLS
Certified State Hearing Officer