May 27, 2026

[redacted]

RE: [redacted] v. WV DoHS/BFA
ACTION NO.: 26-BOR-1910

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: Kelly Coen, Brittany Lucci — Child Care Resource Center

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WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

[redacted],

Appellant,

v. **Action Number: 26-BOR-1910**

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 May 20, 2026.

The matter before the Hearing Officer arises from the Respondent's decision on May 2, 2026, to terminate the Appellant's child care benefits.

At the hearing, the Respondent appeared by Allison Manning, Child Care Resource Center (CCRC). The Appellant appeared and was self-represented. [redacted] appeared a witness for the Appellant. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:
D-1 Hearing Request Form
D-2 Child Care Certificate, issued on September 24, 2025
D-3 Child Care Parent Services Agreement, signed on May 22, 2025
D-4 Child Care Parent Notification Letter, dated April 16, 2025
D-5 Provider Notification Letter, dated April 15, 2026
D-6 Provider Notification Letter, dated April 15, 2026
D-7 Child Care Parent Notification Letter, dated May 2, 2026
D-8 Appellant's 2025 Tax Forms
D-9 West Virginia Secretary of State Online Data Services screenprint
D-10 West Virginia Child Care Subsidy Policy excerpts

Appellant's Exhibits:
A-1 Appellant's Typed Statement

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 24, 2025, the Respondent issued a *Child Care Certificate* to the Appellant. Children [redacted] were approved for child care benefits Monday through Friday, during the Appellant's work hours (Exhibit D-2).

2) At the time of the Appellant's *Child Care Certificate* approval, the Appellant owned and operated a single-member Limited Liability Company (LLC) with no employees (Exhibits D-8, D-9, and A-1).

3) The Respondent was aware of the Appellant's self-employment status as owner and operator of a single-member LLC at the time of her *Child Care Certificate* approval.

4) On April 15, 2026, the Respondent issued a *Provider Notification Letter* to the Appellant's child care providers advising she was ineligible for a child care certificate, effective April 30, 2026 (Exhibits D-5 and D-6).

5) The basis for the April 15, 2026 decision was because the Appellant tax records had not been submitted to the Respondent.

6) On April 16, 2026, the Respondent issued a *Child Care Parent Notification Letter* advising the Appellant she was ineligible for child care services after April 30, 2026, because "CCRC is requesting your 2025 taxes for your self employment [sic] business – [redacted] (Exhibit D-2). The *Notice* instructed the Appellant to submit verification by April 30, 2026 (Exhibit D-4).

7) Before April 30, 2026, the Appellant submitted her 2025 U.S. Individual Income Tax Return Form 1040, Schedule 1, Schedule 2, Schedule C, Schedule SE, and Schedule EIC (Exhibit D-8).

8) On May 2, 2026, the Respondent issued a *Child Care Parent Notification Letter* advising that the Appellant's child care benefits would end after April 30, 2026. The basis for termination was the Appellant's failure to satisfy eligibility qualifications for self-employment. Specifically stating:

> You reported that you now have an employee and are operating as an LLC and not a sole proprietorship-LLC with employees are not an approved activity under

childcare policy. To be eligible for childcare assistance your self-employment must be a sole proprietorship with no employees (Exhibit D-7).

APPLICABLE POLICY

WV CODE § 31B-1-101 *Definitions* provide:

(12) "Limited liability company" means a limited liability company organized under this chapter.
(15) "Member-managed company" means a limited liability company other than a manager-managed company.
(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

WV Code § 31B-1-112 *Nature of business and powers* provide:

(b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

(1) Sue and be sued, and defend in its name;
(2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
(3) Sell, convey, mortgage, grant a security interest in, lease, exchange and otherwise encumber or dispose of all or any part of its property;
(4) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
(5) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises or income;
(6) Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;
(7) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
(8) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;
(9) Elect managers and appoint officers, employees and agents of the limited liability company, define their duties, fix their compensation and lend them money and credit;

(10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans and benefit or incentive plans for any or all of its current or former members, managers, officers, employees and agents;
(11) Make donations for the public welfare or for charitable, scientific or educational purposes; and
(12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

WV Code § 31B-2-201 *Limited liability company as legal entity* and WV Code § 31B-2-202(a) *Organization* provide that a limited liability company is a legal entity distinct from its members. One or more persons may organize a limited liability company, consisting of one or more members.

WV Code § 31B-3-302 *Limited liability company liable for member's or manager's actionable conduct* provides that a limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.

WV Code § 31B-3-303(a) *Liability of members and managers* instructs that except as otherwise provided in subsection (c) of this section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager nor for fines, fees or penalties individually assessed against another member or manager for acts unrelated to the business of the limited liability company.

WV Code § 47-8-2 *Business not to be conducted under assumed name without filing certificate of true name* stipulates that for an individual or sole proprietorship to carry on, conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals owning, conducting or transacting such business, that person or persons shall file with the Secretary of State a form setting forth the name under which such business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons owning, conducting or transacting the same, with the home and post office address or addresses of such person or persons.

WV Code § 47-8-4(a) *Corporations, associations, limited partnerships, limited liability partnerships, and limited liability companies not to conduct business under assumed name without certificate of trade name; application; issuance of certificate of trade name* provides that no limited liability company required to register with the Secretary of State in order to conduct business within the state may conduct or transact any business in this state under any assumed name, or under any designation, name or style, corporate or otherwise, other than the name established by the original certificate establishing the business entity or by an amendment thereto, unless the business entity files in the office of the Secretary of State an application for registration of trade name.

Code of Federal Regulations 45 CFR § 98.11(a) provides that the State Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies.

Code of Federal Regulations: 45 CFR 98.11(b)(2),(4), and (8) provides that the State Lead Agency shall promulgate all rules and regulations governing overall administration of the Child Care and Development Fund (CCDF) State Plan and ensure that the program complies with the approved State Plan and all federal requirements. The Lead Agency is responsible for ensuring 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.

West Virginia Child Care Subsidy Policy § 4.3.4 *Self-Employment - other* includes self-employment in which the primary function of the business is performed at a location other than the family's home.

WV Child Care Subsidy Policy (October 2024) § 4.3.5.1 *Types of Self-Employment – sole proprietorship* is a business run by an individual. The owner is the business; or the owner has all the profits and losses of the business. The owner also has all the control and all the liability for the business operations. Business taxes are paid by the owner through his or her personal income tax return.

A. An individual who is the owner of a business type other than a Sole Proprietorship is not eligible for Child Care Subsidy.
B. An individual who receives regular/irregular income or salary from any business type other than a Sole Proprietorship and owns any portion of that business, is not eligible for Child Care Subsidy.
C. An individual participating as a partner of any business is not eligible for child care subsidy.

WV Child Care Subsidy Policy (October 2024) § 4.3.6.3 and 4.3.6.4 *Criteria for Approval of Self-Employment Activity* provides that child care may be approved for parents who are self-employed if, at the time of application, self-employed individuals provide a copy of their current State of West Virginia Business Registration, copy of consultant contract for independent sales, and a copy of any other required trade licenses or certifications.

Self-employed individuals are required to provide a complete copy of their current tax return by April 30 of each hear, including the 1040 form, 1040 Schedule C, 1040 Schedule SE, and any other tax form as required per type of self-employment.

WV Child Care Subsidy Policy (October 2024) § 4.3.6.6(A) provides that self-employment type approvals are limited to Contracted, Sole Proprietorships. Applicants participating as a member of a C Corporation, S Corporation, Limited Liability Company (LLC), or Partnership, shall not be eligible for WV Child Care Subsidy. A sole proprietorship is an individual who owns and operates trade or a business alone. All profit and loss belong to the individual.

WV Child Care Subsidy Policy (October 2024) § 5.2.2.2(B),(D),(G), and (H) *Allowable Expenses* provides that wages and salaries paid to employees other the parent business owner are allowable deductions in calculating net income. Further, costs related to the purchase, rent, utilities, and taxes of income producing property may be deducted.

WV Child Care Subsidy Policy (October 2024) § 6.6 *Negative Actions* provides that any notification of negative action must be in writing on the Parent Notification Letter (DAY-0177 or DAY-0179), including termination of services. The form letter shall include the specific negative action, with citation of specific policy, and a description of any negative action, if applicable, on behalf of the client that resulted in the negative action. Most negative actions affecting the recipients of child care cannot be taken until 13 calendar days after the client has been notified.

WV Child Care Subsidy Policy (October 2024) § 8.1 *Maintaining Program Integrity* provides that the Child Care Resource and Referral (CCR&R) employee and every DoHS employee are responsible for minimizing the opportunity for improper payments by performing their duties as outlined in the manual. It is essential that the case manager fully understands these policies and procedures.

Clients can be expected to give information only in relation to their understanding of program requirements … Although the client is the primary source of information and is fully responsible for it, the case manager should not hesitate to verify questionable or inconsistent information any time there is doubt about a client's situation.

WV Child Care Subsidy Policy (October 2024) § 8.2 and § 8.2.9 *Improper Payment Prevention Strategies* provides that state level staff work with CCR&R agencies to identify problem policies, procedures, and forms that may lead to errors. Solutions are developed by committee and supported in the field through training and technical assistance supplied by the child care consultants. Child care consultants provide oversight and technical assistance to the CCR&R agencies by quarterly sampling to ensure compliance with procedures and policies, and by providing training and technical assistance to CCR&R agencies on Child Care Policy.

WV Child Care Subsidy Policy (October 2024) § 8.3.1 *Worker Error* in determining eligibility, authorizing, or paying for care may result in improper payments. Improper payments are payments that should not have been made due to worker error in determining and verifying eligibility.

WV Child Care Subsidy Policy (October 2024) § 10.2.1 *Communication between the CCR&R and the Department* provides that program goals cannot be met without clear, effective, cordial communication. The policy notes specific circumstances that require communication between the CCR&R and the child care regulatory specialist.

WV Child Care Subsidy Policy (October 2024) § 13.1.2, and §13.2.3 *Child Care Staff Responsibilities – Division of Early Care and Education* provides that DoHS Division of Early Care and Education (DECE) is responsible for the overall administration of the child care program, including:

- Development and interpretation of policy
- Providing policy training and technical assistance

DISCUSSION

On May 2, 2026, the Respondent retroactively terminated the Appellant's child care benefit eligibility after April 30, 2026, because the Appellant operated an LLC with an employee. The Appellant disputed the Respondent's decision and argued that employing an individual did not make her ineligible for benefits. The Appellant contended that she operated a sole proprietorship single-member LLC at the time of her initial child care approval, filed her business profits and losses on her personal taxes, and should remain eligible for child care benefits. Further, the Appellant disputed the Respondent's retroactive termination of child care eligibility and argued that the termination notice did not grant sufficient due process to allow the Appellant an opportunity to align alternative child care arrangements.

Because the Board of Review lacks the authority to render judgement on the policy itself, the Hearing Officer may only decide whether the Respondent's action was taken according to the standing policies and regulations. Pursuant to the notice, the basis for termination was the Appellant's operation of an LLC with an employee. Therefore, the Respondent had to prove by a preponderance of evidence that the Appellant was ineligible for child care benefits because she operated an LLC with an employee. Further, the evidence had to demonstrate that sufficient advanced notification was provided to the Appellant before the Respondent terminated her child care benefits.

The DoHS Division of Early Care and Education (DECE) is responsible for overall administration of the child care program, including developing policy, interpreting policy, and providing policy training and technical assistance to CCR&R agencies. CCR&R staff are reliant on child care consultants and DECE clarification when policies are unclear. During the hearing, the Respondent's representative testified that actions to approve and terminate the Appellant's eligibility were contingent upon policy guidance received by DECE.

Self-Employment

The West Virginia Code governs business activities in West Virginia. To conduct business, sole-proprietorships and LLCs must file information related to their business name with the Secretary of State before conducting any business. Pursuant to the evidence, at the time of the Appellant's initial *Child Care Certificate* approval, the Appellant was the sole proprietor of a registered single-member LLC with no employees.

Neither the federal regulations, the West Virginia Code, nor the approved WV Child Care and Development Fund (CCDF) State Plan prohibit child care subsidy program participation from sole proprietor single-member LLCs. However, the federal regulations allow the State to promulgate rules and regulations to administer the State Plan and ensure the program's compliance with the State Plan and federal regulations.

During the hearing, the Appellant and her witness argued that the Appellant's business taxes were filed as an individual and not under a partnership or corporation. Pursuant to the Internal Revenue Service (IRS), business taxes for sole proprietorships and single-member LLCs are paid by the owner through the filing of the owner's personal income tax return. While the presented evidence verified that the Appellant's business taxes are reflected on her personal income tax return forms, the factors for determining whether the Appellant's self-employment constitutes an eligible sole proprietorship is contingent upon other factors.

Policy defines a sole proprietorship as an owner having all the control and liability from business operations. The West Virginia Code provides instructions about the nature of business and powers for an LLC. According to the State regulations, an LLC is a legal entity distinct from its members. As a single-member LLC, the Appellant possesses all control of business operations as a member-managed company. However, the LLC maintains liability for business operations including debts, obligations, and liabilities of the company. The West Virgina Code specifies that a member is not personally liable for debt, obligations, or liabilities of the LLC.

Although the Appellant is the sole proprietor of her business and the Appellant's LLC business tax is paid through the filing of her individual tax return, because the LLC, not the Appellant, has all the liability for business operations, the Respondent's decision to deny the Appellant eligibility according to the written policy is correct.

Employees

Pursuant to the policy, wages and salaries paid to employees other than the business owner are allowable deductions in calculating net income. During the hearing, the Respondent's representative stipulated that paying an employee did not render the Appellant ineligible for child care subsidy. The Respondent's inclusion of the Appellant's status as an employer as a basis for ending her child care eligibility was incorrect.

Notification

The Respondent is required to issue written notification which communicates the basis for the proposed adverse action and a citation of the relevant policy. Pursuant to the policy, adverse action may not be taken until 13 calendar days after the client has been notified in writing.

During the hearing, the Respondent's representative testified that previously issued notices advised the Appellant her child care eligibility would end after April 30, 2026. However, the evidence revealed that the basis for the proposed eligibility termination was due to the Appellant's failure to submit required tax records, not due to the Appellant's status as an operator of an LLC with employees. The evidence revealed that the Appellant promptly submitted all required tax information to the Respondent.

As the May 2026 adverse action notice was based on the Appellant's status as an operator of an LLC with employees, the Respondent's decision to retroactively end her child care subsidy eligibility was incorrect. Because the Respondent failed to issue proper advanced notice before terminating the Appellant's child care subsidy eligibility, the Appellant's benefits must be retroactively reinstated to the date of termination. A new advanced notice of termination must be issued before ending the Appellant's child care eligibility based on her status as an owner of a single-member LLC.

Improper Payment

During the hearing, the Respondent's representative testified that the Appellant was initially approved for child care subsidy eligibility because historic guidance received by the DECE instructed CCRC to approve LLC members without employees on a case-by-case basis. According to the evidence, the Respondent approved the appellant's initial child care subsidy eligibility based on an erroneous interpretation of the standing policy. Because the Respondent's policy precludes child care subsidy eligibility for LLC members, including single-member LLCs, an agency error occurred at the Appellant's initial child care subsidy approval which resulted in the Respondent improperly paying for child care for the Appellant after her initial eligibility decision.

CONCLUSIONS OF LAW

1) To be an eligible type of self-employment, the Appellant must have all control and liability for the business operations of her sole proprietorship. Members of Limited Liability Companies (LLCs) are not eligible for West Virginia Child Care Subsidy participation.

2) As a single-member LLC, the Appellant has all control of business operations as a member-managed company.

3) The Appellant's single-member LLC is a legal entity distinct from its members; therefore, the LLC maintains liability for business operations including debts, obligations, and liabilities of the company.

4) Because the LLC, not the Appellant, has all the liability for business operations, the Respondent's decision to deny the Appellant's eligibility was correct.

5) Wages and salaries paid to employees other than the business owner are allowable deductions in calculating net income.

6) The Respondent's inclusion of the Appellant's status as an employer as a basis for terminating her child care eligibility was incorrect.

7) The Respondent must issue written notification to the child care recipient thirteen days before taking the proposed adverse action. The notice must communicate the basis for the proposed adverse action and citation of the relevant policy.

8) The preponderance of evidence revealed that the Respondent failed to issue proper advanced notice before terminating the Appellant's child care subsidy eligibility.

9) Because the Respondent failed to issue proper advanced notice before terminating the Appellant's child care subsidy eligibility, the Appellant's benefits must be retroactively reinstated to the date of termination. A new advanced notice of termination must be issued before ending the Appellant's child care eligibility due to her status as an owner of a single-member LLC.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's child care eligibility. The Respondent's proposed date of child care subsidy eligibility is **REVERSED**. It is hereby **ORDERED** that the Appellant's child care benefit eligibility be reinstated to the date of termination. The matter is **REMANDED** for issuance of proper advanced notice of adverse action prior to terminating the Appellant's child care subsidy eligibility.

ENTERED this 27th day of May 2026.

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Tara B. Thompson, MLS
Certified State Hearing Officer