



**Ann Urling**  
Inspector General

July 14, 2026

RE: [REDACTED] v. WV DoHS/BFA  
ACTION NO.: 26-BOR-2129

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, Child Care Resource Center (CCRC)  
Brittany Lucci, CCRC

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

[REDACTED]

**Appellant,**

**v.**

**Action Number: 26-BOR-2129**

**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 July 1, 2026.

The matter before the Hearing Officer arises from the Respondent's June 1, 2026 decision to terminate the Appellant's Child Care eligibility.

At the hearing, the Respondent appeared by Kelly Coen, CCRC. The Appellant appeared and was self-represented. Appearing as a witness on the Appellant's behalf was [REDACTED]. All witnesses were placed under oath, and the following documents were admitted into evidence.

**Department's Exhibits:**

- D-1 DoHS Child Care Parent Notification Letter, created June 1, 2026
- D-2 DoHS Provider Notification Letters, dated June 1, 2026
- D-3 DoHS Child Care Certificates, issued June 1, 2026
- D-4 DoHS Provider Notification Letters, dated April 15, 2026
- D-5 Typed Child Care Policy Summary, by Kelly Coen
- D-6 Typed Child Care Exemption Policy Summary, by Kelly Coen

**Appellant's Exhibits:**

- A-1 Case Timeline, Practical Timeline of Proposed Remedy, Email to the Division of Early Care and Education,

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) In September 2025, the Respondent, by CCRC, made a worker error that resulted in improper payment for child care services. The error was made when the CCRC worker approved the Appellant's eligibility for child care benefits while she owned and operated an LLC.
- 2) On April 15, 2026, the Respondent issued *Provider Notification Letters* to the Appellant's child care providers advising that she was ineligible for a child care certificate, effective April 30, 2026 (Exhibit D-4).
- 3) On May 27, 2026, a final *Decision* was issued in Board of Review Action No.: 26-BOR-1910, which upheld Respondent's decision to terminate the Appellant's child care eligibility because her status as an LLC owner and operator failed to satisfy the self-employment requirements. In the same *Decision*, the Respondent's proposed April 30, 2026 date of termination was reversed. The Appellant's benefits were ordered to be retroactively reinstated to the date of termination. Finally, the matter was remanded for issuance of proper advanced notice of adverse action before terminating the Appellant's child care subsidy eligibility.
- 4) On June 1, 2026, the Respondent retroactively reinstated the Appellant's child care eligibility to May 1, 2026, through June 14, 2026 (Exhibits D-2 and D-3).
- 5) On June 1, 2026, the Respondent, by Ms. Coen, issued a *Child Care Parent Notification Letter* advising the Appellant she was ineligible for child care services effective June 14, 2026, because the Appellant's business operates as an LLC. The notice reflects a mailing date of June 2, 2026 (Exhibit D-1).
- 6) The Appellant is unable to resolve dissolution of her LLC before the proposed date of adverse action (Exhibit A-1).

### **APPLICABLE POLICY**

#### **Limited Liability Company**

**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.

### **Self-Employment**

**West Virginia Child Care Subsidy Policy § 3.0 *Family Eligibility*** provides that to be eligible for child care services, the family must verify the identity of the head of household, meet WV residency requirements, income requirements, and activity requirements.

**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 § 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 § 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 year, 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 § 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.

#### **Agency Error**

**WV Child Care Subsidy Policy § 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 § 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 § 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 § 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.

#### **Rule Making**

**Child Care and Development Fund (CCDF) 2025-2027 State Plan § 1.3.2 *Public Hearing Process*** provides that Lead Agencies must hold at least one public hearing with sufficient statewide distribution of notice before the hearing to enable the public to comment on the provision of child care services under the CCDF Plan.

**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.

**WV Child Care Subsidy Policy § 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

#### **Policy Waivers**

**WV Child Care Subsidy Policy §§ 4.7 through 4.7.2.4 and §§ 6.5 through 6.5.2.5** explain procedures for exception to the eligibility process and outline the following exceptions to eligibility requirements:

- When family exceeds income guidelines at the end of a job search period
- During Illness, hospitalization, surgery, and post hospitalization/surgery recovery
- After a recent determination of temporary or permanent disability
- When on bed rest during pregnancy
- During medical treatment for a terminal illness

#### **Notification**

**45 Code of Federal Regulations § 205.10(a)(4)(i)** provides that in cases of intended action to discontinue, terminate, suspend or reduce assistance, the State agency shall give timely and adequate notice:

(A) *Timely* means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(B) *Adequate* means a written notice that includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific regulations supporting such action, ...

**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.

## **DISCUSSION**

In compliance with the *Order* issued by the Board of Review in Action No.: 26-BOR-1910, on June 1, 2026, the Respondent retroactively reinstated the Appellant's child care eligibility to May 1, 2026. On that same day, the Respondent, by Ms. Coen, issued a notice advising the Appellant her child care eligibility would end after June 14, 2026, because her business operates as an LLC. The Appellant requested a fair hearing to contest the Respondent's termination of her child care subsidy eligibility, to dispute the date of retroactive reinstatement, and to argue that the advanced notice period was insufficient. Further, the Appellant requested a DECE review of the policy with consideration of the implications of the standing policy on individuals like the Appellant, who own and operate LLCs and would otherwise be eligible for child care subsidy participation.

As the Board of Review lacks the authority to render judgement on the policy itself, the Hearing Officer may only decide whether the Respondent's decision was made in compliance with the standing policies and regulations. The Respondent bears the burden of proof and had to demonstrate by a preponderance of evidence that the Appellant was ineligible for child care benefits because her business operates as an LLC. Further, the evidence had to demonstrate that the Respondent's advanced notice of adverse action was issued according to the timeframes stipulated in the policy.

The DoHS Division of Early Care and Education (DECE) is responsible for the 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. Actions taken by CCR&R staff must be consistent with the written policy, regardless of how training provided by DECE is interpreted.

### **Application of Previous Hearing Decision**

In the Appellant's written hearing request, the date of the retroactive child care subsidy reinstatement was contested. The written hearing request argued that the coverage was backdated to June 1, 2026, not to the previous date of termination. However, documentary evidence supplied by the Respondent proved that the Respondent correctly backdated the Appellant's coverage to May 1, 2026, as the previously proposed effective date of termination was April 30, 2026.

### **Child Care Eligibility**

The facts of the previous adjudication have not changed, and at the time of the Respondent's June 1, 2026 decision, the Appellant's business operated as a single-member LLC. Policy defines a sole proprietorship as an owner having all the control and liability from business operations. According to the West Virginia Code, 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. Specifically, the West Virginia Code provides that a member is not personally liable for debt, obligations, or liabilities of the LLC.

While the federal regulations, the West Virginia Code, and the approved WV CCDF State Plan do not prohibit child care subsidy program participation from single-member LLC's, the Respondent's policy precludes LLC ownership as an eligible self-employment activity for establishing child care subsidy eligibility. As the federal regulations permit the State to promulgate rules and regulations to administer the State Plan, the standing policy must be considered. Because the Respondent's policy prohibits LLC members from participating in the child care subsidy program, the Respondent's June 1, 2026 decision must be affirmed.

### **Waivers to the Policy**

In the Appellant's written hearing request, the Appellant's stated basis for requesting the hearing included clarification regarding the waiver procedures generally mentioned in the previous hearing. The Appellant disputed the Respondent's testimony in the previous hearing regarding the practice of applying waivers to LLCs without employees. During the hearing, Ms. Coen testified that she was not present in the previous hearing and could not object to the testimony provided during the previous hearing.

The Appellant's witness argued that pursuant to conversations had with other LLC owners seeking participation in the child care subsidy program, the application of the Respondent's policy between agencies seems flexible between counties and that the decision to approve or deny between the agencies is applied arbitrarily. The Board of Review may only consider information provided relevant to the instant issue and cannot broadly consider circumstances pertaining to actions taken by other State agencies in other child care cases. Regardless of individual agency interpretation of the policy, the Board of Review must consider the policy as it is written and make an independent *de novo* decision regarding the Respondent's compliance with the policy based on the evidence presented during the hearing.

As evidence for the Respondent, a summary and citation of all policies relevant to child care subsidy requirement waivers were provided, and Ms. Coen testified that no applicable waivers for LLC self-employment existed within the written policy. Pursuant to the policy, there are no exemptions or waivers to the policy that precludes LLC self-employment from child care subsidy eligibility. Therefore, a waiver cannot be provided to exempt the Appellant from the eligibility policy.

### **Agency Error**

Pursuant to the evidence, the Respondent made an agency error in approving the Appellant's child care benefits in September 2025. Although the Appellant disputed the Respondent's interpretation

of policy between the September 2025 benefit approval and the current benefit denial, there is no remedy through the Board of Review for the Respondent's agency error. As the Respondent is not seeking repayment of child care benefits erroneously rendered, no adverse action has been taken against the Appellant regarding the September 2025 benefit approval, and thus, no administrative remedy is available.

Decisions made by the Board of Review are *de novo* and independent of the Respondent's agencies' interpretation of the written policy. As the review of the standing authority establishes that LLC self-employment is prohibited from participation in the child care subsidy program, the Respondent's previous interpretation of policy carries no weight in the instant *Decision* by the Hearing Officer.

### **Policy Review and Development**

During the hearing, the Appellant argued that the primary purpose for requesting a hearing was to have policy questions answered and to request a review of the policy. The Appellant and her witness argued that the Respondent's application of the self-employment policy excludes not only the Appellant but other LLC business owners seeking child care subsidy eligibility. While the Appellant draws rational points regarding the barriers the policy presents to the business owner, the Board of Review is unable to pass judgement regarding the Respondent's policy and can only determine whether CCRC correctly terminated the Appellant's child care eligibility according to the written policy. In the Appellant's written hearing request, a policy level review of the standing policy was sought. This request is beyond the purview of the Board of Review.

During the hearing, the Appellant and her witness inquired about the policy development process. According to the 2025-2027 Child Care and Development Fund (CCDF) State Plan, the Lead Agencies must hold at least one public hearing to enable the public to comment on the provision of child care services under the CCDF Plan. Pursuant to the State Plan, notice of public hearing is posted publicly on the agency and CCR&R websites at least 20 calendar days to the date of the public hearing, with the last public hearing held in 2024. It is reasonable to expect further public hearings to be noticed and held before implementation of the 2028 and ongoing CCDF State Plan adoption.

### **Notice**

The Appellant's written hearing request argued that the time between the notice and effective date of termination was insufficient. The Appellant contended that terminating her child care eligibility before she can reconcile her business status will cause undue hardship until she is able to comply with self-employment requirements and reestablish child care subsidy eligibility. During the hearing, the Appellant contested the advanced notice period established by the policy. The Appellant's testimonial and documentary evidence provided that the thirteen-day advanced notice period was not sufficient to resolve banking and other modifications of her business filing needed to comply with child care eligibility requirements. During the hearing, the Appellant and her witness testified that the Appellant's LLC could not be resolved before the effective date of termination of her child care benefits.

During the hearing, Ms. Coen testified that she personally created and mailed the Appellant's *Child Care Parent Notification Letter* on June 1, 2026, and contended that the computer-populated

mailing date of June 2, 2026, was not the date the letter was mailed. Testimony regarding this date was determined to be reliable and the Appellant did not contest the mailing date during the hearing.

The federal regulations require a written notice to be issued at least ten days in advance when the Respondent proposes to terminate the Appellant's public welfare benefits; however, the Respondent's policy increases the advanced notice period from ten days to thirteen days. According to the policy, adverse action may not be taken until thirteen calendar days after the client has been notified in writing. The Board of Review may not extend the advanced notice requirements beyond what is written in the policy. Pursuant to the evidence, the Respondent issued advanced notice to the Appellant in compliance with the policy and federal regulations before terminating her child care eligibility. Therefore, the Appellant's child care eligibility may not be extended beyond the proposed date of termination.

### **CONCLUSIONS OF LAW**

- 1) To be eligible for child care services, the family must meet activity requirements. 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) The Respondent must issue written notification to the child care recipient thirteen days before taking the proposed adverse action.
- 6) The preponderance of evidence proved that the Respondent, by Ms. Coen, issued advanced written notice to the Appellant according to the timeframe required by policy.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Respondent's decision to terminate the Appellant's child care benefit eligibility.

**ENTERED this 14<sup>th</sup> day of July 2026.**

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**Tara B. Thompson, MLS  
Certified State Hearing Officer**