



June 27, 2024



RE: [REDACTED] v. WVDOHS
ACTION NO.: 24-BOR-2106

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Human Services. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Todd Thornton
State Hearing Officer
Member, State Board of Review

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

cc: Kristall Chambers, Department Representative

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-2106

**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 ██████████. 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 June 4, 2024, upon a timely appeal filed on May 2, 2024.

The matter before the Hearing Officer arises from the April 10, 2024 decision by the Respondent to terminate Child Care services.

At the hearing, the Respondent appeared by Kristall Chambers. The Appellant was self-represented. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Notification letter dated April 10, 2024
- D-2 Hearing request form
- D-3 Email chain between Respondent employees

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant was a recipient of Child Care benefits from the Respondent.
- 2) The Appellant is employed as a director of a child care facility.
- 3) The individual who owns the child care facility employing the Appellant (“The Owner”) also owns another child care facility.
- 4) The Owner’s second child care facility provides child care for the Appellant’s children.
- 5) The Respondent did not discover this for several years.
- 6) Upon discovery of this information, the Respondent mailed a notice (Exhibit D-1) dated April 10, 2024, to the Appellant.
- 7) This notice (Exhibit D-1) reads, in part, “You are no longer eligible for child care services because: **WV Child Care Subsidy Policy prohibits children of a family child care facility employee to use the employer for child care services.** You must select a new child care provider by **04/23/2024**, or your case will close on that day.” (emphasis in original)
- 8) The Appellant did not select a new child care provider.
- 9) The Respondent terminated the Appellant’s child care services.

APPLICABLE POLICY

Policy for the Child Care program can be found in the Child Care Subsidy Policy & Procedures Manual. At §7.2.6, this policy provides (emphasis in original):

7.2.6. Eligibility for Provider’s and/or Child Care Employee’s Children

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

7.2.6.2. Since the provider’s own children are considered in the staff/child ratio in family child care homes and family child care facilities, family providers and facility operators are not eligible for subsidized child care for their own children

while they care for other children. They also may not send their children to another caregiver in order to increase their own capacity.

7.2.6.3. Eligibility for Center Employees - Employees of child care centers who are financially eligible for subsidy may use their employer's child care center, as long as the employee does not supervise his or her own child. The center director shall provide a letter verifying this. Although family child care facilities also have employees, due to the limited space and staffing levels in a family child care facility and the difficulties in insuring supervision will not fall on the parent, children of a family child care facility employee are not eligible to use the employer's child care facility. They may, however, place their children with another provider.

7.2.6.4. Eligibility for employees of the provider in other business endeavors or any of the provider's household members' business endeavors: Children of persons employed by the provider or any of the provider's household members, with the exception of child care center employees meeting the criteria in 7.3.6.3, may not select said provider as their child care provider.

DISCUSSION

The Appellant is contesting the decision by the Respondent to terminate her Child Care services. The Respondent must show, by a preponderance of the evidence, that it did so correctly.

The Appellant receives child care from an individual ("The Owner") who also employs her in another location. Policy does not allow this arrangement. There was no dispute of this fact.

The Respondent did not discover this for several years but mailed the Appellant a notice upon discovery. The notice gave the Appellant the opportunity to change providers. The Appellant did not do so and the Respondent closed her Child Care case. The Appellant explained that she called around to find other child care options but without luck. She testified that her children need the child care and she needs her job. The Board of Review is unable to change policy or create policy exceptions. The sole fact affirming the Respondent's decision was not in dispute. The Respondent's proposed termination is affirmed.

CONCLUSION OF LAW

Because the Appellant is employed by a child care provider owned by an individual who also owns the child care provider that serves her and her children, the Respondent must close her Child Care services.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to terminate the Appellant's Child Care services.

ENTERED this _____ day of June 2024.

**Todd Thornton
State Hearing Officer**