



October 16, 2024

[REDACTED]

RE: [REDACTED] v. WV DoHS
ACTION NO.: 24-BOR-3189

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

cc: William Smalley, WV DoHS, Connect Child Care Resource & Referral

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

████████████████████,

Appellant,

v.

Action Number: 24-BOR-3189

**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 October 02, 2024, on an appeal filed August 28, 2024.

The matter before the Hearing Officer arises from the August 02, 2024 determination by the Respondent to deny the Appellant's application for Child Care Program (CCP) benefits.

At the hearing, the Respondent appeared by William Smalley, Case Manager, Connect Child Care Resource & Referral (CCR&R). Appearing as a witness for the Respondent was Jordan Sharps, Subsidy Supervisor, CCR&R. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 West Virginia (WV) Department of Human Services (DoHS) Application for Child Care Services
- D-2 WV DoHS Notification of New Applicants, dated July 17, 2024
- D-3 Verifications submitted by Appellant, requested July 17, 2024: Application for Child Care, Allowable Provider Fees and Attendance Sheets, Child Care Parent Service Agreement, Paystubs, Lease Agreement, and Household Occupant Statement
- D-4 WV DoHS Child Care Parent Notification Letter Notice of Denial or Closure, dated August 02, 2024
- D-5 Copy of Driver's License – ██████████ and Household Occupant Statement – ██████████
- D-6 Request for Fair Hearing, dated August 28, 2024
- D-7 Pre-Hearing Case Notes, dated August 30 and September 11, 2024

- D-8 WV DoHS Child Care Subsidy Policy § 2.5.4.11
- D-9 WV DoHS Child Care Subsidy Policy §§ 3.3.2.2 through 3.4.2.11
- **D-10 Case Notes, dated July 17, August 02, August 30, and September 10, 2024

Appellant's Exhibits:

- A-1 Email chain between Appellant and JeanneMarie Moore, dated August 02-05, 2024
- A-2 Email chain between Appellant and Jordan Sharps, dated August 14-16, 2024

** The hearing record remained open through October 02, 2024, for the Respondent's submission of case notes relevant to the Appellant's appeal.

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 July 17, 2024, the Appellant completed a telephone application for child care program benefits for one (1) [REDACTED] (Exhibit D-1)
- 2) Subsequent to the July 17, 2024 telephone application, the Respondent issued a notice advising the Appellant that the requested verification(s) be submitted to the Respondent by July 30, 2024 or her child care program application would be denied on that date. (Exhibit D-2)
- 3) The Respondent's July 2024 notice requested verification of: employment, proof of residency, proof of identity, a signed and dated copy of the parent services agreement form, a signed and dated copy of the attendance sheet reminder form, a signed and dated copy of the application, two (2) notarized household occupancy forms, and her choice of child care provider. (Exhibit D-2)
- 4) On July 24, 2024, the Appellant submitted proof of employment (3 paystubs), proof of residency (a copy of her signed lease agreement), a signed and dated copy of the attendance sheet reminder form, a signed and dated copy of the parent services agreement form, a signed and dated copy of the application, her choice of child care provider, and one (1) household occupancy form – not notarized. (Exhibit D-3)
- 5) During a July 30, 2024 phone conversation with the Appellant's case manager, the Appellant was informed that the documentation submitted on July 24, 2024 failed to include verification of her identity (copy of her driver's license) and two (2) notarized household occupancy forms.
- 6) At the time of the July 30, 2024 phone conversation, the Appellant's case manager authorized late submission of the Appellant's pending verifications.

- 7) On August 02, 2024, the Appellant submitted proof of identity (copy of driver's license), and (1) notarized household occupancy form. (Exhibit D-5)
- 8) Subsequent to the Appellant's submission of verification(s), the Respondent issued a notice informing the Appellant that her application for child care services was denied due to the Appellant's failure to provide two (2) notarized household occupancy forms and proof of identity (copy of driver's license) by the July 30, 2024 deadline. (Exhibit D-4)
- 9) The Appellant contested the Respondent's decision and requested a fair hearing on September 11, 2024.

APPLICABLE POLICY

West Virginia Rules of Evidence Rule 801 provides, in part:

- (a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) Declarant. "Declarant" means the person who made the statement.
- (c) Hearsay. "Hearsay" means a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

West Virginia Rules of Evidence Rule 802 provides, in part:

Hearsay is not admissible except as provided by Rule 803: Exceptions to the Rule Against Hearsay

West Virginia Rules of Evidence Rule 803(4)(B)(6) exceptions include, in part:

A record of an act if (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness and (E) neither the source of information nor the method of preparation indicate a lack of trustworthiness.

West Virginia Child Care Subsidy Policy & Procedures Manual (WVCCSPP) §§ 1.1.37 – 1.1.37.2 provides, in part:

An individual who has established West Virginia as a permanent home, the place where s/he intends to return after any period of absence. Individuals are not eligible if they consider another state "home," maintain a principal residence or voter or car registration in another state with an intent to return..... There are no requirements as to the duration of residency for applicants for child care subsidy. Documentation of West Virginia residency includes a West Virginia home address where the applicant lives and one or more of the following items: current West Virginia individual income tax return indicating West Virginia resident status, valid West

Virginia driver's license, current West Virginia motor vehicle registration, proof of undergraduate student in states tuition payment, and other reasonable verification as listed in Chapter 3, Section 4.2.

WVCCSPP §§ 2.4 – 2.4.1.4 provides, in part:

During the intake interview, parents will be asked to submit several verifications. The verifications include the following proofs: Identity, West Virginia residency, all income including child support if received, employment, school, training, WV Works participation for each parent in the home, and/or other need for child care services.

WVCCSPP § 2.4.3.2 provides, in part:

If the application cannot be completed due to the need for additional information or documentation, the case manager shall issue a Parent Notification Letter (DAY-0176) indicating that the application will be denied if the necessary information is not received within 13 days.

WVCCSPP §§ 2.5.4 – 2.5.4.11.B.2 provides, in part:

Parent Responsibilities: As a recipient of child care services, the parent has the following responsibilities:

.....

Reporting changes in circumstances within five days. Failure to report changes to the agency may result in case closure, repayment of services used for time not approved, and/or 30-day penalty closure before services can be reopened. Income changes during the twelve (12) month period will not impact a parent's continuing eligibility for care unless the parent requests a redetermination due to decreases in income that might result in reduced fees. However, the parent(s) shall report the following changes in circumstances to the provider and to the agency, as appropriate:

B. Changes in family size affecting eligibility –

2. Subtractions to household size: child, spouse, or biological parent of children. If the case manager has reason to believe that the client is not accurately reporting family size, the case manager may request verification by legal documentation (i.e., legal separation papers, divorce decree, notice of removal of child from home). If no legal documentation is available, two notarized statements by persons other than relatives stating that the person is no longer in the home may be substituted.

WVCCSPP § 3.0 provides, in part:

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. A child must meet age and WV residency requirements, need child care for a portion of the day, and reside with the head of household applying for services.

WVCCSPP § 3.4 provides, in part:

Child care applicants must be a resident of the State of West Virginia. Proof of identity and residency is required and shall be established by showing a valid photo ID and proof of residency, selected from the following list. If clients do not have proof of identity, they shall be given 13 days to provide it.

WVCCSPP § 3.4.2 provides, in part:

Proofs of WV residency must show the client's current physical address. If the applicant is unable to provide an acceptable proof of residence in their own name, and resides in the home of another individual, the applicant may submit a proof of residency by proxy. Residence by proxy is a document from the list below, that indicates applicant's correct physical address, accompanied by a written statement by the individual whose name appears on the document, verifying the applicant's residency. New proof of residency must be submitted within thirteen days of a change of physical address. Post Office Box addresses, cell phone bills, and 911 residence verifications are not accepted as proof of WV residency. WV driver's licenses are not acceptable as proof of residency unless issued after July 1, 2003. If the mailing address is different than the physical address, this discrepancy must be documented in case contacts.

The following proofs are acceptable: WV utility bills with service at a WV residence address....WV property tax bill or receipt indicating a WV residence address, WV individual income tax return for the most recent year, WV mortgage documents or homeowner insurance documents for a WV residence or proof of WV home ownership with a WV residence address, WV W-2 Form not more than 18 months old with the applicant's name and WV residence address, WV weapons permit with a WV residence address, WV Motor Vehicles registration card that contains a WV residence address, WV Voter's registration card with a WV residence address, WV school enrollment form if applicant is under age 18 with the applicant's WV residence address, Proof that the adult learner is enrolled in a West Virginia educational program, not metro or out-of-state, tuition payment verification, WV Homestead tax exemption with a WV residence address, Residential rental and/or lease agreement with a WV address. Lease must be signed and dated by Lessor and Lessee, and/or Residency by proxy.

DISCUSSION

West Virginia's Child Care Program provides financial assistance to cover the costs of certified family based or licensed center-based child care. To be eligible for child care services, a family must verify the identity of the head of household, meet WV residency requirements, income requirements, and activity requirements. A child must meet age and WV residency requirements,

need child care for a portion of the day, and reside with the head of household applying for services. On September 11, 2024, the Appellant requested a fair hearing to appeal the Respondent's decision to deny her July 17, 2024 application for child care services on the basis of failure to provide verification of identity and two (2) notarized household occupancy forms. It should be noted that prior to the Appellants July 2024 application, the Appellant testified to applying for child care service benefits for two (2) minors temporarily in her care. At that time, the Appellant reported residing at the home of and with [REDACTED] father. However, no evidence or testimony was provided by the Respondent regarding the Appellant's previous application. The Respondent bears the burden of proof and had to prove by a preponderance of evidence that the Appellant was ineligible for child care benefits due to not meeting the policy requirement of providing the Respondent with two (2) notarized household occupancy forms and proof of identity prior to the July 30, 2024 deadline.

On July 17, 2024, the Appellant completed a telephone interview for child care program benefits for one (1) child. Subsequent to the July 17, 2024 phone application, the Respondent issued a notice requesting verification of employment, proof of residency, proof of identity, a signed and dated copy of the attendance sheet reminder form, a signed and dated copy of the parent services agreement form, a signed and dated copy of the application, two (2) notarized household occupancy forms, and her choice of child care provider. The notice further advised that the requested information must be received by July 30, 2024, or the Appellant's child care application would be denied. On July 24, 2024, the Appellant submitted a signed and dated copy of the application, a signed and dated copy of the attendance sheet reminder form, a signed and dated copy of the parent services agreement form, proof of employment (3 paystubs), a copy of her signed lease agreement, and one (1) household occupancy form that was not notarized. On August 02, 2024, a notice of denial was issued to the Appellant for "failure to provide verification of two (2) notarized household occupancy forms and proof of identity" by the July 30, 2024 due date.

The Respondent testified that because the Appellant failed to submit the requested verifications prior to the July 30, 2024 due date, the Appellant's application for child care service benefits was denied. The Respondent argued that on August 02, 2024, the Appellant submitted a copy of her driver's license and one (1) notarized household occupancy form. However, because the verifications were not received prior to the due date, the Appellant's application was denied. The Appellant argued that on July 30, 2024, she contacted the Respondent to check the status of her application. During the July 30 phone conversation with her case manager, she was informed of her failure to submit verification of identity and two (2) notarized household occupancy forms. The Appellant testified that because the call took place at approximately 2:00 p.m., knowing she would not have time to obtain notarized occupancy forms prior to the close of business, she requested and was authorized by the Respondent case manager to submit the documentation "by the end of the week." On August 02, 2024, the Appellant submitted the requested proof of identity (copy of driver's license), and (1) notarized household occupancy form.

The Respondent witness, Child Care Subsidy Supervisor Jordan Sharps (Mr. Sharps), refuted the Appellant's argument. Mr. Sharps testified that on September 11, 2024, a pre-hearing conference was held. At the time of the conference, the Appellant was advised that because her July 17, 2024 application reported a subtraction in household size than that of the previously submitted application, policy requires household occupancy to be verified. Mr. Sharps argued that the Appellant's case manager reported instructing the Appellant to submit the verifications "as soon as possible." Mr. Sharps further argued that the Respondent's case manager "clearly" intended

“as soon as possible” to mean prior to the July 30, 2024 deadline. However, when questioned if the Respondent’s case manager was available to provide testimony, Mr. Sharps testified that she was not. At the time of the hearing, additional case notes were provided; however, there was nothing to corroborate the Respondent’s need for notarized household occupancy forms for a new application, or that corroborated “as soon as possible” meant “prior to the July 30, 2024 deadline.” The Respondent’s evidence only details that the case manager instructed the Appellant to submit the verifications “as soon as possible.” Because the phone conversation took place at approximately 2:00 p.m. on Wednesday, July 30, 2024, it is reasonable to believe the Appellant’s assertion that “as soon as possible” and “by the end of the week” both implied that her submission on Friday, August 02, 2024, to be acceptable.

Additionally, the regulations provide that the Respondent may enter factual information to be considered in the determination of a case. The regulations stipulate that when deciding whether the Respondent’s action was correct, the Board of Review may only consider the evidence entered during the hearing. This evidence may include documents and/or the testimony of witnesses that parties provide in order to prove their positions at the hearing. Evidence based not on personal knowledge, but that of another's statements not made under oath is considered hearsay. When the person being quoted is not present, the absence of such documentation confirming the verifications makes establishing credibility unfeasible, as does cross-examination. Therefore, because the Respondent’s case manager was not present in order to provide testimony, and because the appellant was not afforded her right to cross examination, the hearsay testimony from the Respondent witness was not considered.

Further, the Respondent’s own policy and procedures manual provides, in part, that applications require verification of “identity, West Virginia residency, all income including child support if received, employment, school, training, WV Works participation for each parent in the home, and/or other need for child care services.” Only when a recipient of child care services reports a change in circumstance should the Respondent require verification of a subtraction to household size. Because the Appellant’s July 17, 2024 request for child care services for [REDACTED] was a new application, the Respondent’s request for two (2) notarized occupancy forms was unreasonable and in contradiction of the policy. Additionally, if the Respondent had reason to believe that the Appellant was not accurately reporting household family size, the Appellant’s July 24, 2024 submission of a signed lease agreement detailing the residential occupancy containing only herself and [REDACTED] should have sufficed. Therefore, it is the finding of this Hearing Officer that the Respondent’s decision to deny the Appellant’s application for child care services cannot be affirmed. Because there was no dispute that the Appellant failed to provide a verification of identity until August 02, 2024, the Appellant’s child care service eligibility shall be retroactive to the date of submission.

CONCLUSIONS OF LAW

- 1) Pursuant to policy, applications for child care service benefits require verification of identity, West Virginia residency, all income including child support if received, and employment/school/training/WV Works participation for each parent in the home, and/or other need for child care services.

- 2) Policy stipulates that only when a recipient of child care services reports a change in circumstance should the Respondent require verification of subtraction to household size.
- 3) Because policy provides that new applications do not require verification of a subtraction to household size, the Respondent incorrectly required the Appellant to submit two (2) notarized occupancy forms at the time of application.
- 4) Policy further provides that if an application cannot be completed due to the need for additional information or documentation, the case manager shall issue a notice indicating that the application will be denied if the necessary information is not received within thirteen (13) days.
- 5) The preponderance of evidence demonstrated that the Respondent's case manager authorized late submission of the Appellant's requested verification.
- 6) The preponderance of evidence revealed that the Appellant submitted the required verification of identity on August 02, 2024.
- 7) Because the evidence revealed that the Respondent's case manager authorized the Appellant's late submission of verification of identity, the Respondent must back-date the Appellant's eligibility to the date of submission, August 02, 2024.
- 8) The Respondent failed to prove by a preponderance of the evidence that it acted in accordance with the policy when denying the Appellant's July 17, 2024 application for child care service benefits.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Respondent's decision to deny the Appellant Child Care Services eligibility. It is hereby **ORDERED** that the Appellant's eligibility be retroactive to the Appellant's August 02, 2024, submission of identity verification.

ENTERED this _____ day of October 2024.

**Angela D. Signore
State Hearing Officer**