



## State of New Jersey

DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY  
OFFICE OF THE DIRECTOR

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*Via email only to [info@childsplaycc.com](mailto:info@childsplaycc.com)*

Lauren Borawski  
Child's Play Challenge Courses, LLC  
410 Montague Avenue  
Scotch Plain, New Jersey 07076

RE: In the Matter of Child's Play Challenge Courses, LLC  
Appeal of Women Business Enterprise Ineligibility Determination

Dear Mrs. Borawski,

This letter is in response to your letter dated January 24, 2024, on behalf of Child's Play Challenge Courses, LLC (Child's Play) appealing the Division of Revenue and Enterprise Services' (DORES) January 17, 2024, determination that Child's Play was ineligible to be certified as a Women Business Enterprise (WBE) in accordance with N.J.S.A. 52:27H-21.17 et seq., and N.J.A.C. 17:46-1.1 et seq.

By way of background, on or about April 22, 2022, DORES received an application from Child's Play requesting certification as a WBE. The application documents indicated that the company was going to start a new business. See, Child's Play WBE Application, Child's Play listed its principal and percentage of ownership as follows:

**Owner**

Lauren Borawski, F, Other  
Owner 51.00 % Owned

Matthew Borawski, M, Other  
Owner 49.00%

On September 20, 2023, DORES contacted Child's Play, requesting submission of the following documents via the online application portal:

Please submit the following:

1. Photo ID of the owners.

The requested information was provided by Child's Play, and DORES again contacted Child's Play on December 19, 2023 requesting the following:

1. The certificate of formation shows Matthew Borawski's name as Members/Managers, Lauren's name does not show, why?

2. Are there changes in ownership since formation of applicant company? If yes, submit agreement/contract of sale transferring ownership and proof of payment for acquired shares/ownership.

DORES sent a follow up email on December 27, 2023 reiterating the above request after no reply was received. DORES received an email from Child's Play on January 10, 2023 in which the Mrs. Borawski wrote: I was added to the business to run the operations. There was no sale that transferred ownership from Matt to me. It's a family business. I didn't purchase my share of the business, I own 51% and Matt still owns 49%.

At the conclusion the review of Child's Play's application, DORES issued its determination on January 17, 2024, finding that "Child's Play Challenge Courses, LLC is not eligible for certification as a Woman-owned Business Enterprise (WBE) under the State of New Jersey's Certification Program." Specifically, the letter indicated that:

The application request for WBE certification has been denied for the following reason(s):

*"Gifted Ownership"*

1. According to the certificate of formation, Matthew Borawski formed Applicant Company on June 2, 2015.
2. According to Certificate of Amendment, date November 8, 2022 shows that Lauren Borawski was added to the company as Chief Operation Officer.
3. According to Operating Agreement signed and dated September 15, 2023, Applicant Company's ownership shows as 51% owned by Lauren Borawski and 49% owned by Matthew Borawski.
4. As per the vendor's response via email dated January 10, 2024, "I was added to the business to run the operations. There was no sale that transferred ownership from Matt to me. It's a family business. I didn't purchase my share of the business, I own 51% and Matt still owns 49%."

*This indicates that this is a gift. New Jersey's Certification Law prohibits using "gifted ownership" in determining that an applicant woman owner has the minimum 51% of the stock to qualify for WBE status.*

Based upon the foregoing factors, I have determined that **Child's Play Challenge Courses, LLC** does not meet the requirements to be certified by The State of New Jersey as a WBE firm.

[DORES January 17, 2024, letter, pgs.1-2, emphasis in original.]

On January 24, 2024, Child's Play submitted a letter appealing DORES' rejection of its WBE application. In its letter, Child's Play answers the four points of the DORES rejection rationale as follows:

1. According to the certificate of formation, Matthew Borawski formed Applicant Company on June 2, 2015.

**THIS IS CORRECT**

2. According to the Certificate of Amendment, dated November 8, 2022 shows that Lauren Borawski was added to the company as Chief Operation Officer.

**THIS IS INCORRECT**

**According to the Certificate of Amendment, dated November 8, 2022, as per the Amended Article 5, Lauren Borawski was made a Member (Owner) of Child's Play Challenge Courses LLC, as per the filing and signed by existing Child's Play Challenge Courses Member (Owner), Matthew Borawski, at which point forward Child's Play Challenge Courses LLC became a Multi-Member LLC.**

**In the Amended Filing, prompt asked to identify roles of Owners, at which point Matthew Borawski was designated CEO and Lauren Borawski was designated COO, roles that they attend to since Company inception in 2015.**

**Furthermore, after filing the Amended Certificate of Formation, Matthew and Lauren Borawski filed a REG-CL to amend the Registration of the Company with DORES and update Ownership Percentage of Two Members. (Please see attached). This form was mailed to the Trenton address indicated at top of form and signed by both Members.**

3. According to Operating Agreement signed and dated September 15, 2023, Applicant Company's ownership shows as 51% owned by Lauren Borawski and 49% by Matthew Borawski.

**THIS IS CORRECT; HOWEVER, Lauren Borawski became a Member of the LLC in 2022 and filed a REG-CL for ownership/tax purposes in April 2023. Although an Operating Agreement existed between Members, it was not until September 2023 that Owners created a more detailed document within the template chosen and then signed.**

4. As per vendor's response via email dated January 10, 2024, states "I was added to the business to run the operations. There was no sale that transferred ownership from Matt to me. It's a family business. I didn't purchase my share of the business. I own 51% and Matt still owns 49%. This indicates that this is a gift. New Jersey's Certification Law prohibits using "gifted ownership" in determining that an applicant woman owner has the minimum 51% of the stock to qualify for WBE status.

**THIS IS INCORRECT**

**Response from Lauren Borawski was written within an email in a conversational text but does not accurately reflect the nature of the LLC and its ownership.**

**-Company was formed by husband and wife, Matthew and Lauren Borawski as a Single Member LLC under the name of Matthew Borawski.**

**-Several years later, Lauren retired from her job to work full time for Child's Play Challenge Courses LLC.**

**-In late 2022, Matthew amended the Articles of Formation to add an additional Member to the Company in order to transfer 51% legal ownership of LLC to Lauren, and thereby create a Multi-Member LLC. Members agreed to ownership distribution of 51% to Lauren and 49% to Matthew.**

**-In early 2023, Matthew and Lauren amended the Company Registration using a REG CL for TAX PURPOSES in the new TAX YEAR to reflect Ownership Breakdown for MultiMember LLC, with Lauren receiving 51% and Matthew receiving 49%. - By NO MEANS was the 51% GIFTED to Lauren Borawski.**

- **As per the Amended Certificate of Formation, original sole owner Matthew Borawski engaged in a transfer of the Membership Interest**
- **As per the REG-CL Lauren attained 51% ownership, and Matt maintained 49%**
- **As per the Operating Agreement, Lauren is rightful equity owner of Company as per ATTACHMENT A of the Operating Agreement showing an equity contribution to the Business.**
- **Lauren maintains majority ownership AND control of Company as she is responsible for all day-to-day operations and shares responsibility for all company decision making.**

[Child's Play January 24, 2024, letter, pgs.1-2, emphasis in original.]

Although Child's Play has not requested an in-person presentation as permitted by N.J.A.C. 17:46-1.8(d)(2), it is noted that pursuant to N.J.A.C. 17:46-1.8(f), "[t]he Director has sole discretion to determine if an in-person presentation by the appellant is necessary to reach an informed decision on the matter(s) of the appeal. In-person presentations are fact-finding for the benefit of the Director." Further, "[i]n cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal hearing." N.J.A.C. 17:46-1.8(f). I have reviewed the record of this matter, including the relevant statutes, regulations, case law, and documents submitted by Child's Play. The issues raised in Child's Play's appeal were sufficiently clear such that a review of the record of this matter has provided me with the information necessary to determine the facts of this matter and to render an informed final agency decision on the merits of the appeal submitted by Child's Play on the written record, as such an in-person hearing is not warranted. I set forth herein DORES' Final Agency Decision.

In 1986 the New Jersey Legislature, recognizing that "historically, business owned by minorities and women have been small establishments offering products and services and their participation in the nation's business community has been disproportionate to their numbers in society as a whole" passed P.L.1986, c.195. N.J.S.A. 52:27H-21.17(a). Accordingly, the Legislature determined that

[n]otwithstanding the provisions of any law, rule or regulation to the contrary, the division shall have the exclusive authority within State government to certify to public agencies the eligibility of a business to bid on contracts as a "minority business" or "women's business" under any program conducted by the public agency for which such certification is so required. That certification by the division shall be binding on the public agency.

[N.J.S.A. 52:27H-21.19.]

In reviewing applications for certification as a WBE, the Division is charged with

- d. Screen[ing] applicants to insure that businesses seeking certification are not misrepresenting their status as minority businesses or women's businesses, as the case may be, and that the minority or women's business applicants are, in fact, in the control of members of minority groups or women, and are not merely "fronts" for businesses controlled by persons other than minorities or women; [and]
- e. Monitor[ing] the status of certified businesses to insure continued compliance with the criteria for certification and control by the appropriate persons[.]

[N.J.S.A. 52:27H-21.20]

N.J.S.A. 52:27H-21.18 defines the term "woman" and "women's business" as follows:

- h. "Woman" or "women" means a female or females, regardless of race.
- i. "Women's business" means a business which is:
  - (1) A sole proprietorship owned and controlled by a woman; or
  - (2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
  - (3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or, if stock is issued, at least 51% of the stock is owned by one or more women.

[N.J.S.A. 52:27H-21.18(h) and (i).]

The legislative history for N.J.S.A. 52:27H-21.7 et seq. reveals that in drafting the statute the legislature originally contemplated a more expansive definition for the term "Women's business" than the definition currently included in N.J.S.A. 52:27H-21.18(h) and (i). The relevant portion of the legislative history is shown here:

54 \***[i.]** \* *h.* \* "Woman" or "women" means a female or females, re-  
 55 gardless of race.  
 56 \***[j.]** \* *i.* \* "Women's business" means a business which is:  
 57 \***[(2)]** \* *(1)* \* A sole proprietorship owned and controlled by a  
 57A woman; or  
 58 (2) A partnership or joint venture owned and controlled by  
 59 women in which at least 51% of the ownership is held by women  
 60 and the management and daily business operations of which are  
 61 controlled by one or more women who own it; or  
 62 (3) A corporation or other entity \***[controlled by women in which**  
 63 at least 51% of the voting interest and at least 51% of the bene-  
 64 ficial ownership interest are held by women]\* *\*whose management*  
 65 *and daily business operations are controlled by one or more women*  
 66 *who own it, and which is at least 51% owned by women, or, if stock*  
 67 *is issued, at least 51% of the stock is owned by one or more women\*.*

As shown above, the legislature limited the definitions of "Women's business" from that which would have followed ownership to the ultimate "beneficial owner" – essentially permitting indirect ownership, to a definition which requires that the entity seeking certification be directly owned by a woman. Accordingly, when adopted in December 2020, the corresponding regulation defined "women's business" as follows:

"Woman" or "women" means an individual, regardless of race, who selfidentifies her gender as a woman, without regard to the individual's designated sex at birth.

"Women's business" means a business, pursuant to N.J.S.A. 52:27H21.18, which is:

1. A sole proprietorship owned and controlled by a woman;
2. A partnership or joint venture owned and controlled by women in which at least 51 percent of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
3. A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by women, or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

[N.J.A.C. 17:46-1.2.]

Additionally, in reviewing applications for certification as a WBE, DORES is charged with

Screen[ing] applicants to insure that businesses seeking certification are not misrepresenting their status as minority businesses or women's businesses, as the case may be, and that the minority or women's business applicants are, in fact, in the control of members of minority groups or women, and are not merely "fronts" for businesses controlled by persons other than minorities or women.

[N.J.S.A. 52:27H-21.20(d).]

As defined by the law,

“Control” (managerial and operational control) means authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions, and the rights of other shareholders or joint partners. Control shall not include absentee ownership. Control shall be deemed not to exist where an owner is not a minority in the case of a minority business; or where the owner is not a female in the case of a women’s business. Additionally, control shall not be deemed to exist where someone, other than a minority or a woman, is disproportionately responsible for the operation of a business, or for policy and contractual decisions.

[N.J.A.C 17:46-1.2.]

With respect to certification as a women’s business gifted ownership is not to be considered in the certification of a business as either a women’s business. Cf. N.J.A.C. 17:46-1.4(b)(2)(iii). This section requires that an application for WBE Certification include “[n]ames and addresses of capital investors and the *amount of capital contributed*. Gifted ownership shall not be considered.” *Id.*, emphasis added.

The Certificate of Formation document included with Child’s Play’s application indicates that Matthew Borawski formed the Applicant Company on June 2, 2015. Only later, according to the Certificate of Amendment, dated November 8, 2022, was Mrs. Borawski made a Member (Owner) of Child’s Play, at which point forward Child’s Play Challenge Courses LLC became a Multi-Member LLC. This information is also consistent with Mrs. Borawski’s statements that there was no sale transferring ownership to her from Mr. Borawski who was the single applicant owner at time of formation.

While the intent of the transfer documents may have been the restructuring of the share percentages, for tax or some other purpose, this “gifted” ownership runs contrary to the DORES regulations effective as of April 22, 1998, and most recently readopted on December 21, 2020. While the request from DORES for information regarding the ownership may not have stated that gifted ownership was prohibited, the public regulations required by all WBE applicants is a matter of public record. As New Jersey’s courts have long recognized, “ignorance of the law, however, is not a sufficient basis to excuse compliance with the requirements of an established rule of law[.]” Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 367 (2010) (quoting Circle Chevrolet Co. v. Giordano, Halleran & Ciesla, 142 N.J. 280, 302-03, 662 A.2d 509 (1995)).

While I recognize Child’s Play may not have intended to act contrary to the above ownership requirements, its initial submission failed to meet the requirements for the requested WBE certification, and its attempted transfer violated the non-gifted ownership requirement. New Jersey’s courts, when reviewing questions of statutory interpretation, have stated that

When the Legislature’s language is clear and unambiguous, and subject to only one interpretation, we apply the statute’s plain meaning. Bosland, *supra*, 197 N.J. at 553-54, 964 A.2d 741; DiProspero, *supra*, 183 N.J. at 492-93, 874 A.2d 1039; O’Connell v. State, 171 N.J. 484, 488, 795 A.2d 857 (2002). But when the statutory language is ambiguous and subject to more than one reasonable interpretation, we must look to extrinsic

evidence, such as legislative history, judicial interpretation, and rules of statutory construction. Bosland, *supra*, 197 N.J. at 553-54, 964 A.2d 741; DiProspero, *supra*, 183 N.J. at 493-94, 874 A.2d 1039; State v. Fortin, 178 N.J. 540, 607, 843 A.2d 974 (2004).

[In re Challenge of Contract Award Solicitation No. 13-X-22694 Lottery Growth Management Services, 436 N.J. Super. 350, 368 (App. Div. 2014).]

The Division does not deny that Mrs. Borawski is active in managing the business, as she notes in her letter. Here however, the requirements for WBE certification are clear that a business must be 51% or greater owned by a woman or women to be granted certification as a woman-owned business, and that ownership must be based on some capital contribution and may not be gifted. I do not have the authority to make a determination that is contrary to the clear wording of the legislation. Only the New Jersey Legislature can change a statutory requirement that it has mandated.

In reviewing Child's Play's application, along with the documents submitted with Child's Play's appeal, there is nothing that contradicts the findings of the finding of the Division that Mrs. Borawski was gifted her ownership stake in Child's Play within the meaning of the statute. Not only is there no evidence of a monetary transfer, and Mrs. Borawski admits as much in her January 10, 2024 email to The Division, but the January 24, 2024, letter confirms the facts relied upon in DORES' letter. Based upon the foregoing, I uphold DORES' ineligibility determination regarding Child's Play's application for certification as a Woman-Owned Business Enterprise under the New Jersey Unified Certification Program.

Sincerely,



Cory K. Kestner  
Acting Hearing Officer  
On Behalf of the Division of  
Revenue and Enterprise Service

c: R. Desilva  
A. Villagran