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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: KOP - 173905

PRELIMINARY RECITALS

Pursuant to a petition filed on April 26, 2016, under , to review a decision by the Children's Service Society of Wisconsin regarding Kinship Care, a hearing was held on May 17, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of Kinship Care benefits from the Petitioner in the amount of \$696 for September 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

2. Petitioner provided care to three children until August 27, 2015. On August 27, 2015, a court order was issued for Change of Placement for all three children ordering them to be re-unified and placed with their mother.
3. Petitioner received Kinship Care benefits for the children through September, 2015. For September, 2015, the Petitioner received KC benefits of \$232 for each child for a total of \$696 for the month.
4. On March 29, 2016, the agency issued a notice to the Petitioner informing her that the agency intends to recover an overpayment of benefits in the amount of \$696 for benefits issued in September, 2015 due to the children no longer being in the Petitioner's care in September.
5. On April 26, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). One requirement for receipt of the Kinship Care benefit is that the child be legally placed in the Kinship Care applicant/recipient's home. *Id.*

The Department of Children and Families is authorized by the Wisconsin Administrative Code to recoup overpayments under the Kinship Care program. Wisconsin Administrative Code Chapter DHS § 2.01 explains "[t]his chapter is promulgated...to establish procedures for the recovery of incorrectly paid benefits." Wis. Admin. Code § 2.01. The Kinship Care program comes within the purview of the chapter because "benefits" are defined as payments under programs within Chapters 48 and 49 of the Wisconsin Statutes. See DHS § 2.03(3). The Kinship Care Program is authorized and set forth in Chapter 48. Though Chapter DHS 2 of the Administrative Code is specifically one relating to the Department of Health Services, the Department of Children and Families ("DCF") is authorized to recoup under this chapter pursuant to the notes following DHS §§ 2.02 and 2.03 which both state: "[t]his chapter applies to Department of Health Services and Department of Children and Families programs until such time as each of the departments can adopt separate rules." The Department of Children and Families, which administers the Kinship Care Program through county agencies, has not adopted separate rules relating to overpayments under the program. Therefore, overpayments under the Kinship Care Program may be recouped by DCF under Wis. Admin. Code Chapter DHS 2.

In this case, the Petitioner did not dispute that the children were no longer placed in her home in September, 2015. She testified that she used the money to purchase clothing and school supplies for the children. I have no reason to doubt that the Petitioner used the money to benefit the children. However, the law is clear that the Petitioner was only entitled to receive the benefits when the children were actually placed in her care. The Petitioner seeks an equitable remedy. An administrative law judge is not authorized to act in equity but rather must apply the facts to the law as it is written. Therefore, I must conclude that there was an overissuance of benefits to the Petitioner and the agency is authorized to recover that overissuance.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of Kinship Care benefits to the Petitioner in the amount of \$696 for September, 2015.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of August, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 17, 2016.

Children's Service Society of Wisconsin

DCF - Kinship Care

DCF - Kinship Care