



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

FOS/146012

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2012, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Wisconsin Department of Children and Families in regard to Foster Care payments, a hearing was held on January 31, 2013, by telephone.

The issue for determination is whether the petitioner was overpaid foster care benefits of \$851.07 for the child ██████████ in November 2011.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Atty. Jennifer Wakerhauser
Office of Legal Counsel

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. The petitioner was a licensed foster parent at all times relevant hereto. The child ██████████ was placed in the petitioner's foster home from November 2010 through November 17, 2011. ██████████ (age 16 at

the time) was removed from the home on November 18, 2011, and placed in a group home. ■■■'s siblings remained in the petitioner's foster home thereafter.

3. In 2011, the monthly foster care payment for ■■■ was \$1,964.00. On December 1, 2011, the Department paid the petitioner the full \$1,964 for ■■■ for November.
4. The petitioner should only have been paid \$1,112.93 for ■■■ for his 17 days of care in November 2011 (1,964 divided by 30 days, x 17 days). The difference between \$1,964 minus \$1,112.93 is \$851.07.
5. On November 8, 2012, the Department issued an overpayment notification to the petitioner. It advised that he had ben overpaid \$851.07 in foster care for the child ■■■, for the November 18-30, 2011 period. *See*, Exhibit R-1. The petitioner timely appealed.

DISCUSSION

Wisconsin Statute §48.62(6) allows the Department to recover incorrectly made foster care payments, “by reducing the amount of the foster parent’s monthly payment.” The Department’s foster care rule, ch. DCF 56, provides no further direction on benefit overpayment recovery.

Curiously, a different code chapter provides additional direction – ch. DHS 2 – “Recoupment of Benefit Overpayments.” This may be a relic of the era when the Department of Health and Family Services oversaw foster care; however, this rule has not been repealed or amended to delete its reference to §48.62. Section DHS 2.01 declares that this chapter was promulgated under Wis. Stat. §48.62(6) “to establish procedures for the recovery of incorrectly paid benefits.” This code chapter’s definition of “benefits” includes payments under ch. 48 of the statutes, and contains this “incorrect payment” definition:

(5) *"Incorrectly paid benefits" means benefits paid for an individual not eligible for any benefits during the period for which the payment was made or paid in an amount in excess of the amount that the individual was eligible to receive.*

[emphasis added]

Wis. Admin. Code § DHS 2.03(5).

The petitioner does not contest the receipt of a full foster care payment for ■■■ for November 2011, does not contest that the child was out of the foster home from November 18-30, and does not contest the Department’s arithmetic in calculating the November 2011 overpayment amount. Thus, I conclude the petitioner was “incorrectly paid” a \$851.07 benefit.

The code goes on to provide the following overpayment recovery authority:

DHS 2.04 Recovery of incorrectly paid benefits.

(1)

(a) Subject to applicable law, if the department... finds that incorrectly paid benefits under chs. 48 or 49, Stats., have been made, the department ... may seek recovery from the eligible individual or from the person or entity authorized to receive benefits on behalf of the eligible individual or from both. The total amount recovered may not exceed the amount of the incorrectly paid benefits, and shall be offset by any amounts that are owed the eligible individual or the person or entity authorized to receive benefits on behalf of the eligible individual because of a previous underpayment of benefits.

(b) The recovery period for incorrectly paid benefits shall be limited to one year prior to the date that the overpayment is discovered.

(1g) Interest may not be accrued or collected on incorrectly paid benefits.

...

(3) Except as provided under s. DHS 2.05, recovery of incorrectly paid benefits from an individual currently eligible to receive benefits may be made by reducing the amount of the individual's benefits by no more than 10% each month until the full amount of the incorrectly paid benefits is recovered, unless the individual requests a larger percentage deduction. A written notice of intent to recover shall be provided to the individual as required under sub.

(6).

Id., 2.04(1)-(3) (June 2006).

One of the petitioner's arguments is that the Department took too long to ask for its money back. The petitioner decided to spend the overpayment on the needs of other children in his household. However, because the code specifically limits recovery to payments made within one year of the overpayment's "discovery" (as evidenced by the notice to the foster parent) the code is essentially telling me that the Department has at least one year to notify a foster parent of an overpayment before it is "too late." *See, id.*, § 2.04(1)(b). In this case, the Department made it under the wire by notifying the foster parent on November 8, 2012, of the overpayment made on December 1, 2011.

Another of the petitioner's arguments is that ■■■ damaged petitioner's property (dollar amount not documented at hearing) above the level of normal wear and tear. The Department responded that it has a separate claims procedure to address such a concern, and that the petitioner has not yet availed himself of that procedure. *See*, Exhibit R-7. Given that the Department has such a property damage reimbursement process, I will not try to shoehorn in such a claim under the waiver provision at § DHS 2.05 (assuming that this code provision is even applicable).

Finally, the petitioner argues that some of ■■■'s possessions remained at his foster home for several months after removal, that the timing of payments was confusing, and that the quality of his interaction with the Department and county around ■■■'s subsequent placement was very poor. This was very unfortunate, but is not a basis for reducing the amount of the overpayment claim.

CONCLUSIONS OF LAW

1. The petitioner was overpaid \$851.07 in foster care payments for the child ■■■ in November 2011.
2. The petitioner is liable for the overpayment.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of July, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
FOSoverpay2012



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 8, 2013.

Foster Care
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