



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/148788

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 17, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regards to a determination that the petitioner was overpaid \$17,649.46 in Child Care benefits, a telephone hearing was held on May 22, 2013, at Milwaukee, Wisconsin. At the request of both parties, the record was held open for 10 days for the submission of additional documents.

The issue for determination is whether jurisdiction is present to review the petitioner's appeal due to the application of the doctrine of claim preclusion.

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  
Madison, Wisconsin 53703

By: Darryl Caper, HSPC  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a Child Care benefits assistance group that received at least \$17,649.46 in public assistance between July 11, 2010, and October 31, 2011, for the care needs of her two minor children, as provided by the petitioner's own mother, Dorothy [REDACTED], as provider.

2. On March 29, 2012, the county agency issued a Child Care (CC) Overpayment Notification to the petitioner, advising that she had been overpaid \$14,232.88 in child care benefits for her two children for the period of July 11, 2010 to June 30, 2011, due to the failure to report accurate household composition and that the father of one of her children was not employed or participating in approved W-2 activities.
3. On March 29, 2012, the county agency issued a Child Care (CC) Overpayment Notification to the petitioner, advising that she had been overpaid \$3,416.58 in child care benefits for her two children for the period of July 1, 2011 to October 31, 2011, due to the failure to report accurate household composition and that the father of one of her children was not employed or participating in approved W-2 activities.
4. The petitioner filed an appeal with the Division of Hearings & Appeals on April 4, 2012, in DHA Case No. CCO/140067, contesting the Child Care overpayments described in Findings of Fact #2 & #3, above.
5. On January 18, 2013, Administrative Law Judge Gary Wolkstein dismissed the petitioner's appeal in DHA Case No. CCO/140067, sustaining both overpayment amounts, i.e., sustaining as a matter of fact and law that the petitioner was overpaid a total of \$17,649.46 in Child Care benefits between July 11, 2010 and October 31, 2011, due to her failure to report that the father of one of her children was in her home and that he was not employed or participating in approved W-2 activities in this time period. See, Exhibit #1, attachment A, "Amended Decision" dated January 18, 2013, at pp. 1-2.
6. At no time thereafter did the petitioner file any appeal with a circuit court of competent jurisdiction or file any further request for rehearing or reconsideration after ALJ Wolkstein's Amended Decision of January 18, 2013.
7. At no time after January 18, 2013, did the Department or its agents act to amend the overpayment determination claim amounts of \$14,232.88 or \$3,416.58, or issue any amended notices of overpayment on these two claims totaling \$17,649.46.
8. On April 17, 2013, the petitioner filed a new appeal in DHA Case No. CCO/148788, again contesting the Department's determinations that she was overpaid \$17,649.46 in Child Care benefits in the period of July 11, 2010 – October 31, 2011.

### DISCUSSION

Claim preclusion (formerly known as "res judicata") requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as "collateral estoppel") requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner has had her "day in court" on the merits of her appeal about the overpayment of \$17,649.46 in Child Care benefits between July 11, 2010 – October 31, 2011. The instant appeal claim is precluded by that result, under both the doctrines of claim preclusion and issue preclusion. Rather, the instant claim is exactly what the doctrines prohibit; a vexatious, repetitive and needless claim. This matter has been decided in a final decision, and that result is binding as a matter of fact and law. In short, the petitioner

had her opportunity to heard, and she lost. She is not entitled to “another kick at the cat” at this late juncture.

### **CONCLUSIONS OF LAW**

That the instant appeal in DHA Case No. CCO/148788 is precluded by the doctrines of claim preclusion and issue preclusion as the claim and issue in the instant appeal was decided in a final decision in DHA Case No. CCO/140067, i.e., the Amended Decision of ALJ Gary Wolkstein dated January 18, 2013; jurisdiction is not present to review the merits of the agency overpayment determination again.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 11th day of June, 2013

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\sKenneth D. Duren, Assistant Administrator  
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 June 11, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud