FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

CCO/152755

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was scheduled for December 17, 2013. Prior to the hearing, the petitioner's representative joined her co-respondent, TR, in presenting a dispositive motion seeking to resolve the present matter on grounds of issue preclusion. The hearing date was adjourned and a briefing schedule was established. Pleadings were received timely.

The issue for determination is whether jurisdiction is present to review the respondent's overpayment allegations due to the application of the doctrine of issue preclusion.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Attorney Kirsten Navarrette
404 N Main St #702
Oshkosh, WI 54901

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
By: Nancy Wettersten

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Winnebago County.
2. The respondent has asserted a Child Care overpayment against petitioner based upon allegations that petitioner resided with TR. Respondent asserts that petitioner failed to report TR in her household and failed to report his income.

3. The respondent has previously asserted Child Care, FoodShare and Medical Assistance overpayments against petitioner. Petitioner successfully appealed the FoodShare and Medical Assistance overpayment assertions. See, *In the Matter of* [redacted], DHA Case Nos. FOP/150361 and MOP/150778 (Dec. 21, 2013).

4. The respondent's previously asserted Child Care overpayment was withdrawn prior to hearing, as was petitioner's appeal of said Child Care overpayment determination.

5. The respondent subsequently issued a new, corrected, Child Care overpayment notice, from which petitioner has again appealed.

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." *Id.*, p. 550.

Petitioner originally appealed the respondent's finding of overpayments regarding FoodShare, Medical Assistance, and Child Care in June and July of 2013. See, *In the Matter of* [redacted], DHA Case Nos. FOP/150361 and MOP/150778 (Oct. 21, 2013). Hearings on all three matters were to be held together on September 4, 2013. At or shortly prior to hearing, the respondent withdrew the Child Care overpayment matter due to an insufficient overpayment notice. The FoodShare and Medical Assistance hearings proceeded as planned. The respondent alleged in the FoodShare and Medical Assistance hearing, in pertinent part, that the alleged overpayments were due to petitioner's error in failing to report that TR was residing with her and TR's income. *Id.*

Decisions issued following the September 4, 2013, hearings pertaining to the FoodShare and Medical Assistance overpayments concluded that the respondent had failed to establish that TR was living with petitioner, and further failed to establish petitioner error as the cause of the overpayment. *Id.* Petitioner asserts in the dispositive motion, and I concur, that the parties have not substantively changed, nor have the issues on appeal. Specifically, the petitioner is facing the same allegations by the respondent on the instant Child Care matter that she faced in the prior FoodShare and Medical Assistance matters, i.e., that petitioner failed to report that TR lived with her, and failed to report accurate household income as a result. The allegations have not changed, nor has the respondent appealed the prior decisions. I also find it noteworthy that the respondent recognized the preclusive effect of the prior decisions and dropped (or rescinded) the FoodShare and Medical Assistance overpayment liability of TR following the decisions issued regarding petitioner's FoodShare and Medical Assistance overpayments; the decisions in those case only ordered the rescission of *petitioner's* liability.

The respondent has had its "day in court" on the merits of the alleged overpayment. The instant overpayment allegation is precluded by the previous hearing and result under the doctrine of issue preclusion. The Child Care overpayment claim, based upon claims that petitioner failed to report that TR lived with her, and failed to report accurate household income as a result, is exactly what the doctrines prohibit; a 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 respondent has had its opportunity to heard, and it failed to establish the overpayments. The respondent is not entitled to "another kick at the can" at this juncture.

CONCLUSIONS OF LAW

The respondent's assertion of a Child Care overpayment in the present matter is precluded by the doctrine of issue preclusion as the issues in the instant appeal were decided at *In the Matter of* [redacted], DHA Case Nos. FOP/150361 and MOP/150778 (Oct. 21, 2013); jurisdiction is not present to review the merits of the overpayment determination again.

THEREFORE, it is **ORDERED**

That the matter is remanded to the county agency with instructions to rescind petitioner's liability for Child Care overissuance claim nos.:

Claim No.	[redacted]	8/1/10-1/31/11	$ 128.00,
Claim No.	[redacted]	8/1/11-1/31/12	$6,491.00,
Claim No.	[redacted]	2/1/12-4/30/12	$1,463.00,
Claim No.	[redacted]	6/1/12-7/31/12	$2,069.00,
Claim No.	[redacted]	8/1/12-1/31/13	$2,125.00, and
Claim No.	[redacted]	2/1/13-2/28/13	$ 42.00,

and cease all recovery efforts against petitioner. These actions shall be completed within 10 days of the date of this Decision.

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, Madison, Wisconsin 53703, **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 Madison,
Wisconsin, this 24th day of March, 2014.

\sPeter McCombs
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 March 24, 2014.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud
Attorney Kirsten Navarrette