



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

AAP/156671

PRELIMINARY RECITALS

Pursuant to a petition filed April 04, 2014, under Wis. Admin. Code §DCF 50.065, to review a decision by the Department of Children and Families in regard to the Adoption Assistance Program, a hearing was held on May 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the Petitioner was overpaid Adoption Assistance Benefits in May 2013.

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: Attorney Barbara Reinhold
DCF Office of Legal Counsel
635 N. 26th Street
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On November 12, 1999, the Petitioner signed an Adoption Assistance Agreement regarding a child, TO/TJ, that indicated the adoption assistance would end when the child reached age 18, unless the child fell into an exception. One exception stated that the child could receive adoption

- assistance until she reached age 21, if she had a mental or physical handicap. (Respondent Exhibit 1)
3. On March 23, 2013, Thomas [REDACTED], an accountant with the Department of Children and Families, sent the Petitioner a notice indicating that the child's adoption assistance would end in April 2013, the month the child turned 21. (Respondent Exhibit 2; Testimony of Mr. [REDACTED])
 4. DCF erroneously issued an Adoption Assistance payment for TO/TJ for May 2013, in the amount of \$1,647.00. (Respondent Exhibit 5)
 5. On March 26, 2014, DCF sent the Petitioner a notice indicating that she had been overpaid Adoption Assistance in the amount of \$1,647 for the period of May 1, 2013 through May 31, 2013. The notice further indicated that DCF would be reducing the Adoption Assistance paid to Petitioner for a different child by \$137.25 per month, until the overpayment is paid in full. (Petitioner's Exhibit 1; Respondent Exhibit 6)
 6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 4, 2014. (Petitioner's Exhibit 1)

DISCUSSION

Adoption assistance is defined as a payment, by DCF to an adoptive or a proposed adoptive parent of a child, that is intended to help the parent pay for the cost of caring for that child. Wis. Stats. §48.975(1); Wis. Admin. Code §DCF 50.01(1)(2). Adoption assistance may only be provided for, "a child with special needs and only when the department has determined that such assistance is necessary to assure the child's adoption." Wis. Stats. §48.975(2); *See also* Wis. Admin. Code §DCF 50.03(1)(b)

Wis. Stats. §48.975(3m) allows adoption assistance to continue past a child's 18th birthday. Under Wis. Admin. Code §DCF 50.06(3)(b), adoption assistance must end when a child reaches age 18, unless the child falls into a stated exception. For example, adoption assistance may continue until a child reaches age 21, if the child is 1) a full time high-school student, 2) has a mental or physical handicap which warrants the continuation of assistance, 3) the child is not eligible for other benefits, such as supplemental security income, and 4) the child otherwise lacks adequate resources to continue in high school or the equivalent. *Id.*

It is undisputed that the child in question was entitled to adoption assistance until she turned 21 in April 2013. It is also undisputed that the Petitioner received an adoption assistance payment to which she was not entitled in May 2013, due to agency error.

The Petitioner argues that she should not be held liable for the incorrectly paid benefits, because she did not cause the overpayment and because she didn't realize that she had been overpaid benefits at the time. However, Petitioner's ignorance about the overpayment is irrelevant in determining whether an overpayment actually occurred. Moreover, the statutory provision governing the recovery of incorrectly paid benefits, does not state that DCF may ignore an overpayment when it is due to agency error.

While it appears that the Wisconsin Statutes do not provide much guidance concerning if, when and how DCF is to recoup incorrectly paid adoption assistance benefits, they do state:

The department may recover an overpayment of adoption assistance from an adoptive parent who continues to receive adoption assistance for maintenance by reducing the amount of the adoptive parent's monthly payment of adoption assistance for maintenance. The department may by rule specify other methods for recovering overpayments of adoption assistance.

Thus, DCF is well within its statutory authority to collect the overpayment of adoption assistance benefits, by reducing the adoption assistance that is still being paid for another of Petitioner's children.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid Adoption Assistance Benefits in May 2013.

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 Milwaukee,
Wisconsin, this 8th day of July, 2014

\sMayumi M. Ishii
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 July 8, 2014.

Adoption Assistance
Attorney Barbara Reinhold