



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/156799

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 10, 2014, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Kinship-DCF in regard to Kinship Care, a hearing was held on May 29, 2014, at Kenosha, Wisconsin.

NOTE: The record was held open to give DCF an opportunity to submit a case note from October 24, 2011. It has been marked as Exhibit 3 and entered into the record.

The issue for determination is whether the Department of Children and Families (DCF) has correctly intercepted the Petitioner's child support payments to satisfy an overpayment of Kinship Care benefits.

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: Roger Phillips, Fiscal Program Manager, Kinship Care Worker  
Kinship-DCF  
Bureau of Milwaukee Child Welfare

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. On an unspecified dated the Bureau of Milwaukee of Child Welfare generated a BMCW Overpayment Detail Sheet indicating the Petitioner was overpaid Kinship Care benefits in the amount of \$440.00. It is not clear from the record if this was ever mailed to the Petitioner. (Exhibit 2, pg. 5)

3. On May 30, 2012, Perez-Pena. Ltd. requested approval of an invoice and an Invoice Request was approved for a Kinship Care overpayment to be recouped from Petitioner. (Exhibit 2, pg. 7)
4. On May 31, 2012, DCF sent the Petitioner an invoice for a Kinship Care overpayment in the amount of \$440. The invoice did not explain the basis of the overpayment or provide any appeal rights. (Exhibit 1, pg. 6)
5. On August 30, 2012, DCF sent the Petitioner another copy of the May 31, 2012 invoice. (Exhibit 1, pg. 4)
6. On November 2, 2012, the Department of Children and Families sent Petitioner a notice indicating that it was going to refer a \$440.00 overpayment of Kinship Care benefits to the Wisconsin Department of Revenue. The letter did not include any information concerning Petitioner's appeal rights. (Exhibit 2, pg. 3)
7. On February 2, 2014, the Petitioner received notice from Kenosha County Child Support Enforcement that her child support payments were being intercepted to satisfy an overpayment of Kinship Care Benefits. (Exhibit 1)
8. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on or about April 10, 2014. (Exhibit 1)

### DISCUSSION

The Kinship Care benefit is a monthly, public assistance payment made to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, 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). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In the case at hand, the Department of Children and Families (DCF) seeks to recoup an overpayment of Kinship Care payments of \$440 for the months of August and September 2011. However, DCF has not been able to produce any notices that were provided to the Petitioner that explained her appeal rights and advised her of appeal deadlines. Petitioner testified that she was prompted to file an appeal when back child support payments to her began being intercepted.

Wis. Stats. §49.195(3) requires the DCF to determine whether an overpayment of Wisconsin Works or AFDC benefits has occurred, to provide notice of the overpayment to the liable individual and to give the individual an opportunity for review. Wis. Admin. Code DCF 58.08(1) specifically states that, with regard to Kinship Care Benefits, if any agency makes a decision to deny benefits (which is effectively what the recoupment of an overpayment is), DCF, "shall notify the applicant or kinship care or long-term kinship care relative in writing of its decision and the reasons for the decision and shall include in the notice information about the applicant's, or kinship care or long-term kinship care relative's right to appeal or request a review of that decision under sub. (2).

Although DCF has provided a case note indicating that an overpayment notice was issued to the Petitioner in October 2011, without a copy of the actual notice there is insufficient evidence to prove the notice was issued and that the notice properly notified the Petitioner of the amount of the overpayment, the basis of the overpayment and how to exercise her appeal rights.

Without evidence of a proper overpayment notice, DCF cannot establish that it took appropriate measures to intercept the Petitioner's child support payments.

Until DCF properly issues an overpayment notice to the Petitioner, it may not continue collections on that debt.

**CONCLUSIONS OF LAW**

The agency has not met its burden to prove that it correctly intercepted the Petitioner's child support payments to satisfy an overpayment of Kinship Care benefits.

**THEREFORE, it is**

**ORDERED**

That DCF cease collection of the \$440 overpayment for September and October 2011. The agency shall take all administrative steps to complete this task within ten days of this decision.

**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 14th day of July, 2014.

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\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 14, 2014.

Kinship-DCF  
DCF - Kinship Care