



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION

CCO/157514

PRELIMINARY RECITALS

Pursuant to a petition filed May 12, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on July 10, 2014, at Milwaukee, Wisconsin. A decision was subsequently issued on September 23, 2014, which remanded this matter back to the respondent to rescind four identified Overpayment Claims.

On October 9, 2014, the respondent requested a rehearing, which was granted on November 7, 2014. The undersigned Administrative Law Judge determined that further hearing was not necessary, as the issue raised by the respondent concerned an error of law.

The issue for determination is whether adjudication of Child Care overpayment claim nos. [REDACTED] and [REDACTED] is barred by the doctrine of claim preclusion.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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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 Milwaukee County.

2. The respondent issued notice of Child Care overpayment Claim nos. [REDACTED] and [REDACTED] to petitioner on or about April 3, 2014.
3. On April 7, 2014, petitioner appealed those overpayments, and a hearing was scheduled for assigned Division of Hearings and Appeals case no. CCO/156613.
4. Subsequent to petitioner's April 7, 2014, appeal filing, the respondent provided an Appeal Summary for case CCO/156613 to the Division of Hearings and Appeals that identified Child Care overpayment Claim nos. [REDACTED] and [REDACTED].
5. Prior to a hearing in case CCO/156613, the petitioner submitted a written withdrawal of her appeal, which was dated April 19, 2014. On April 25, 2014, the Division of Hearings and Appeals acknowledged receipt of petitioner's withdrawal and dismissed petitioner's appeal.
6. On May 2, 2014, the county agency sent petitioner a Child Care Overpayment Notification advising her that it had opened Claim no. [REDACTED] (2/23/2014-3/31/2014) to an collect overpayment of Child Care Benefits.
7. Petitioner appealed that notice on May 12, 2014, and a hearing was scheduled for, and conducted, on July 10, 2014.
8. Subsequent to petitioner's May 12, 2014, appeal filing the respondent provided an Appeal Summary for case CCO/157514 to the Division of Hearings and Appeals that identified Child Care overpayment Claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED].
9. Following hearing, a Decision was issued in case CCO/157514, which ordered the rescission of Child Care overpayment Claim nos. [REDACTED], [REDACTED], [REDACTED], and [REDACTED], which had been identified by the respondent in said case.

DISCUSSION

The respondent requested a review of the September 23, 2014, Decision, noting that petitioner's Child Care overpayment Claim nos. [REDACTED] and [REDACTED] were the subject of an earlier, withdrawn appeal by the petitioner. A review of the record indicates that the respondent is correct.

The confusion in the instant case arises from Appeal Summaries provided for this case and its predecessor, CCO/156613. These claims were identified in the respective Appeal Summaries:

CCO 156613	CCO 157514
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

The respondent litigated Claim nos. [REDACTED] and [REDACTED] at the July 10, 2014, hearing in the instant appeal.

As noted in Finding of Fact 6 in the September 23, 2014 Decision,

An electronic Appeal Summary prepared by the respondent and provided to the Division of Hearings and Appeals prior to hearing specified two additional overpayment claim nos.: [REDACTED] and [REDACTED]. No notices or worksheets related to the overpayments pertaining to these claim numbers were offered into the record. ...

DHA Decision CCO/157514.

While the respondent's CCO/157514 Appeal Summary identified claim nos. [REDACTED] and [REDACTED], the respondent did not prosecute those claims at hearing. I am unable to address those claims as they have already been appealed. That appeal, CCO/156613, was withdrawn by petitioner on April 19, 2014, and thereafter dismissed by a Decision dated April 25, 2014. Further litigation of those claims is barred by the doctrine of claim preclusion (formerly known as "res judicata"), which requires a final judgment on the merits in a prior proceeding. *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 opportunity to appeal claim nos. [REDACTED] and [REDACTED]. She withdrew that appeal, the appeal was dismissed, and that dismissal was not appealed. Regardless of the fact that the respondent identified these claims anew in the instant appeal, CCO/157514, further adjudication of those claims is precluded by the previous result, under the doctrine of claim preclusion. The appeal regarding Child Care Claim nos. [REDACTED] and [REDACTED] has been decided in a final decision, and that result is binding as a matter of fact and law. As such, the respondent is entitled to reinstate overpayment claim nos. [REDACTED] and [REDACTED].

CONCLUSION OF LAW

The adjudication of Child Care overpayment claim nos. [REDACTED] and [REDACTED] in the instant appeal in DHA Case No. CCO/157514 is precluded by the doctrine of claim preclusion as the claim in the instant appeal was withdrawn by petitioner and dismissed in a final decision in DHA Case No. CCO/156613.

THEREFORE, it is

ORDERED

1. That the ordered rescission of Child Care overpayment claim nos. [REDACTED] and [REDACTED], as ordered in the Decision dated September 23, 2013, is hereby withdrawn and deleted. The respondent shall reinstate Child Care overpayment claim nos. [REDACTED] and [REDACTED] within 10 days following issuance of this Rehearing Decision.
2. That the rescission of Child Care overpayment claim nos. [REDACTED] and [REDACTED], as ordered in the Decision dated September 23, 2013, is not affected by this Rehearing 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 November, 2014.

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 24, 2014.

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