



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

AAP/159551

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2014, under Wis. Admin. Code §DCF 50.065, to review a decision by the Adoption Assistance in regard to Adoption Assistance Program, a hearing was held on August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the respondent correctly seeks to recoup an overpayment of Adoption Assistance aid to petitioner.

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: Dale W. Langer, Adoption and Consultation Section

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner adopted her daughter approximately three years ago, and she was given adoption assistance as part of the adoption, in accordance with an adoption assistance agreement that she executed on February 17, 2011. Exhibit 1.

3. Due to agency error, petitioner received duplicate payments for a period of 16 months (March, 2011-June, 2012). Petitioner was notified of the \$19,763.20 overpayment on November 12, 2012, and did not appeal the overpayment. See, Exhibit 2.
4. On December 19, 2013, having received no payment toward the identified overpayment, the respondent notified petitioner of its intent to refer this debt to the Department of Revenue. Exhibit 4.
5. On June 20, 2014, the respondent notified petitioner that it intended to reduce her adoption assistance payments by \$500.00 per month until the overpayment is recovered. Exhibit 5.
6. On July 21, 2014, petitioner appealed the determination to reduce her monthly Adoption Assistance benefit by \$500.00.

DISCUSSION

Adoption assistance is a benefit paid to facilitate the adoption of children with special needs. Wis. Adm. Code, §DCF 50.01(1). Once assistance is approved for an adopted child, the child remains eligible for the benefit until she reaches 18 years of age unless she remains in high school or the equivalent, in which case assistance can continue up to age 19. §DCF 50.06(3)(b)1.

Monthly adoption assistance amounts are based upon foster care rates specified in Wis. Stat., §48.62(4) and care levels specified in Wis. Adm. Code, §DCF 56.11(3). Wis. Adm. Code, §DCF 50.05(1). There are base foster care rates, and supplemental rates that are based on care levels. Additional amounts can be added for special family circumstances; these amounts are called exceptional rates. §DCF 50.05(4).

Typically, adoption assistance is set at the time of adoption. Recovery of incorrect adoption assistance payments is permitted under Wisconsin law.

Recovery of incorrect payments. 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.

Wis. Stat. § 48.975 (4m).

In this case, the respondent determined that the petitioner had received an overpayment due to agency error, i.e., the agency was providing petitioner with double payments between March, 2011 and June, 2012. The statutory recovery language cited above does not prohibit recovery based upon which party caused the overpayment; this is similar to FoodShare regulations, where generally speaking, whose "fault" caused the overpayment is not at issue. See, 7 C.F.R. § 273.18(b); see also, FoodShare Handbook, § 7.3.1.9.

Furthermore, the statutory language permits the respondent to recoup overpayments via reductions to the petitioner's monthly adoption assistance. I found no further rules or policy statements regarding the imposition of the reduction, nor did the petitioner identify any similar such guidance or law. The respondent provided testimony indicating that the reduction was determined without considering petitioner's ability to pay, and that it was unaware of any regulation dictating what amount of reduction is proper. The testimony explained that the reduction was determined by dividing the overpayment amount by the number of petitioner's remaining months of Adoption Assistance eligibility; as respondent's witness explained, if the money is not recouped during petitioner's remaining eligibility period, the overpayment will likely never be repaid. The respondent, who confirmed that it had been contacted by petitioner and informed that she could not afford the \$500.00 reduction, conceded that it never considered petitioner's ability to afford the \$500.00 reduction when it made its determination.

While I certainly empathize with petitioner's financial distress, and find the respondent's reduction determination to be completely unreasonable and capricious, the Division of Hearings and Appeals does not have authority to ignore the clearly stated, yet obviously imperfect, law. I note to petitioner that I have no equitable powers that would allow me to consider the fairness of the situation and must apply the law as it is written. It is the long-standing policy of the Division of Hearings & Appeals that the Department's assigned administrative law judges do not possess equitable powers. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Therefore, I must find that the respondent correctly determined the petitioner's household income. If the petitioner disagrees with this decision she may appeal it to a circuit court, which does have equitable powers, or consult with her political representative(s).

CONCLUSIONS OF LAW

The respondent correctly seeks to recoup an overpayment of Adoption Assistance aid to petitioner via a reduction in petitioner's monthly Adoption Assistance payments.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 23rd day of October, 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 October 23, 2014.

Adoption Assistance

Attorney [REDACTED]