



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

In the Matter of

██████████
██████████
██████████

DECISION

KOP/██████████

PRELIMINARY RECITALS

Pursuant to a petition filed December 02, 2014, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Marquette County Department of Human Services in regard to Kinship Care, a telephonic hearing was held on March 10, 2015, at Montello, Wisconsin. At the request of petitioner, a hearing set for February 5, 2015 was rescheduled. At the request of the parties, the record was held open for one week for the submission to DHA of the petitioner’s closing argument by Attorney Kuettel, and then for another week until March 25, 2015 for the submission of the agency’s responsive closing argument to DHA. Both parties timely submitted their closing argument to DHA which are received into the hearing record.

The issue for determination is whether the county agency provided proper and adequate written notice to the petitioner regarding correctly seeking a Kinship Care overpayment for the month of August, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative:

Attorney Vanessa Kuettel
Legal Action of Wisconsin
404 N Main St Suite 702
Oshkosh, WI 54901

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: ██████████, Kinship Care worker
Marquette County Department of Human Services
480 Underwood Avenue
PO Box 99
Montello, WI 53949-0099

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marquette County who resides with her husband, [REDACTED].
2. Petitioner and her husband received Kinship Care benefits from the county agency for their grandson, [REDACTED].
3. The father of [REDACTED] [REDACTED]. The mother of [REDACTED] deceased.
4. [REDACTED] [REDACTED] was incarcerated, but was released on August 1, 2014 and moved into the household of [REDACTED] and [REDACTED].
5. The county agency sent August, 2014 Kinship Care ([REDACTED]) benefits to the petitioner.
6. On August 11, 2014, petitioner telephoned the county agency, and left a voice mail message specifically indicating that [REDACTED] was released from prison, and had moved into her household.
7. On August 13, 2014, county agency social worker, [REDACTED] returned the petitioner's phone message and verbally informed her that her Kinship Care benefits would discontinue retroactive to August 1, 2014 and that she would be assessed a Kinship Care overpayment for the month of August, 2014.
8. On August 13, 2014, [REDACTED] sent a letter to the petitioner stating the following: "I am sending this letter just as a confirmation to our phone conversation that the kinship payment will end as of August 1, 2014. Reason being [REDACTED] is now living with you and kinship is not allowed when birth parents are living in the same household and their child(ren). Thank you for calling and confirming with the agency that [REDACTED] father has moved in with you. There is no need to respond to this letter. Keep it for your records if you wish." That letter contained no appeal rights to the petitioner.
9. The county agency failed to send any written notice to the petitioner that her Kinship Care benefits would discontinue retroactive to August 1, 2014.
10. The county agency failed to send any written notice to the petitioner that she was assessed a Kinship Care overpayment for the month of August, 2014.
11. The petitioner filed a timely December 2, 2014 appeal to the Division of Hearings and Appeals (DHA) regarding both her Kinship Care discontinuance and overpayment.
12. The county agency failed to provide proper, timely and adequate notice to the petitioner of either the August 1, 2014 Kinship Care discontinuance or the August, 2014 Kinship Care overpayment.

DISCUSSION

Public Assistance benefits are statutory entitlements for persons qualified to receive them, and recipients of public assistance benefits are entitled to procedural due process when the government engages in adverse actions regarding their benefits. Goldberg v. Kelly, 397 U.S. 254, 261-62 (1970). In the instant case, petitioner did not receive timely and adequate written notice of the proposed Kinship Care (KC) termination or overpayment. Wis. Admin. Code § DCF 58.08(1) requires that the agency shall notify the Kinship Care relative in writing of its decision to discontinue benefits and the reasons for that decision. The county agency failed to do so. In regard to petitioner's Kinship Care (KC) overpayment, Wis. Admin. Code § DHS 2.04(6) requires that no overpayment recovery can be made unless the recipient is given at least 20 days prior written notice of the Department's intent to recover an overpayment. The county agency failed to do so.

It is well established law that proper notice is required prior to the termination of public assistance benefits. Goldberg, 397 U.S. at 267-268. Petitioner's representative, Attorney Vanessa Kuettel, correctly argued during the hearing and in her well-written, convincing brief that petitioner did not receive timely and adequate notice in the discontinuance or overpayment actions, and thus the appeal deadlines were not triggered and petitioner's appeal requests are timely. Due process does impose the burden of providing timely and adequate notice on the county, not the recipient.

Attorney Kuettel further argued correctly that the county improperly discontinued petitioner's KC benefits on August 1, 2014, due to the agency's failure to provide written notice and incorrectly imposed a retroactive termination date. During the hearing, the county agency representative did not contest that the agency failed to provide any proper, timely and adequate written notice to the petitioner regarding her KC discontinuance or overpayment actions. Furthermore, the agency incorrectly retroactively terminated petitioner's KC benefits as of August 1, 2014, instead of discontinuing those benefits prospectively as of September, 2014. The county agency was unable to refute that it improperly retroactively discontinued petitioner's KC as of August 1, 2014. Thus, petitioner is correct that the August 1, 2014 termination of petitioners' KC benefits was improper due to the agency's failure to provide advance written notice and its decision to incorrectly impose a retroactive termination date.

The county agency incorrectly and improperly issued an overpayment against petitioner for August, 2014 because petitioner did timely report the child's father moved into her home. An overpayment is issued when a recipient receives improper benefits. However, in this case, petitioner did report to the agency the change within 10 days of the change occurring ([REDACTED] moving into the petitioner's home). Furthermore, petitioner did not receive proper notice to the August, 2014 KC overpayment as required by Wis. Admin Code § DHS 2.04(6). Thus, petitioner is correct that the overpayment was improper due to petitioner's timely reporting the change in circumstances, and the agency's failure to provide proper and adequate written notice to the petitioner regarding the proposed overpayment.

In any discontinuance or reduction of benefits, the county agency has the burden of proof to establish that it correctly discontinued or reduced the recipient's benefits. The county agency representative failed to provide testimony or evidence to establish that the agency met its burden of proof that the agency correctly discontinued petitioner's KC effective August 1, 2014, or correctly established a KC overpayment for the month of August, 2014. Based upon the hearing testimony and the exhibits, I conclude that the county agency failed to provide proper and adequate notice to the petitioner regarding discontinuing the petitioner's Kinship Care benefits retroactive to August 1, 2014 or seeking a Kinship Care overpayment for the month of August, 2014.

CONCLUSIONS OF LAW

1. The county agency failed to provide proper, timely, and adequate written notice to the petitioner regarding seeking an August, 2014 Kinship Care overpayment against the petitioner.
2. The county agency incorrectly and improperly sought an August, 2014 Kinship Care overpayment against the petitioner.

THEREFORE, it is

ORDERED

The matter is remanded to the county agency with instructions to take the necessary actions to rescind and cancel the August, 2014 Kinship Care overpayment against the petitioner, 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.

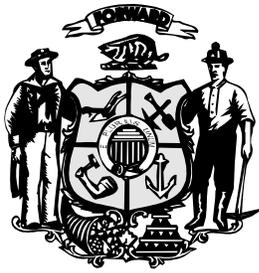
APPEAL TO COURT

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, Room G200, 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 11th day of May, 2015

\sGary M. Wolkstein
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 May 11, 2015.

- Marquette County Department of Human Services
- DCF - Kinship Care
- DCF - Kinship Care
- Attorney Vanessa Kuettel