



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KOP/169199

PRELIMINARY RECITALS

Pursuant to a petition filed October 06, 2015, under Wis. Stat. § 227.44 and Wis. Admin. Code HA § 1.04(3), to review a decision by the Children's Service Society of Wisconsin in regard to Kinship Care, a hearing was held on October 22, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether this ALJ has jurisdiction to decide this matter when the petitioner filed and withdrew her original appeal request in February 2014.

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, Room G200
Madison, Wisconsin 53703

By: Angela Guerrido

Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On February 6, 2014 the agency sent the petitioner a kinship overpayment notice. The notice stated that the petitioner was overpaid \$880.00 in kinship payments in December of 2013. The

notice further stated that she had 30 days to request an administrative hearing from the Division of Hearings and Appeals.

3. The petitioner timely requested a hearing from the Division of Hearings and Appeals. A hearing was scheduled with ALJ Brian Schneider on March 5, 2014 at 10:30 a.m. Prior to that hearing, on February 26, 2014, the petitioner withdrew her appeal. The hearing was removed from the calendar, and no hearing took place.
4. On October 6, 2015 the petitioner submitted another Request for Fair Hearing. She attached a kinship overpayment invoice for \$880.

DISCUSSION

Claim preclusion (formerly known as *res judicata*) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *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.

I further note that the Division of Hearings and Appeals has the authority to hear cases pursuant to the HA section of the Administrative Code. The Division of Hearings and Appeals only has the limited authority to hear very specific cases on very specific issues as discussed in Wis. Admin. Code §§ HA section. The Division of Hearings and Appeals has jurisdiction over kinship overpayment pursuant to Wis. Admin. Code §§ HA 1.04(3). However, a party has 30-days from the date of the letter/overpayment notice to file an appeal. *Id.* If a person files an appeal untimely, I have no jurisdiction to decide the appeal. *Id.*

In this case the petitioner filed a previous appeal in February 2014. The appeal was scheduled for a hearing. Prior to the hearing she submitted a written request to withdraw that appeal. It is the policy of the Division of Hearings and Appeals to only withdraw appeals based upon a written request. She then did nothing for one year and eight months. At that time she sent a second fair hearing request for the same overpayment. I have no jurisdiction to decide this case on the merits. The time to litigate the merits of this case was at the first scheduled hearing on March 5, 2014.

The petitioner now states that she does not remember withdrawing that previous appeal. I do not find that testimony credible. If she did not intend to withdraw the appeal, then she would have appeared for the hearing or called in and provided a telephone number where she could be reached for the hearing. Had she done those things, the agency would have heard her appeal. It is now one year and eight months from the original overpayment notice. The time to appeal that overpayment has long passed, and I have no authority to do anything.

CONCLUSIONS OF LAW

This ALJ does not have jurisdiction to decide this matter when the petitioner filed and withdrew her original appeal request in February 2014.

THEREFORE, it is

ORDERED

That the petition is 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, 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 Milwaukee,
Wisconsin, this 3rd day of November, 2015

\sCorinne Balter
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 November 3, 2015.

Children's Service Society of Wisconsin
DCF - Kinship Care
DCF - Kinship Care