



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

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In the Matter of

**Agape Love Christian Child Development Center**

PROPOSED DECISION

ML-08-0270

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Pursuant to a petition filed by the petitioner on September 8, 2008, under Wis. Stat. § 49.195(3), to review a decision by the Milwaukee County Department of Human Services (county or agency) that the petitioner had been overpaid by the Wisconsin Works Child Care (CC) program, a hearing was held on September 14, 2009, at the county offices on Vliet Street in Milwaukee, Wisconsin. Several prehearing conferences preceded the hearing.

The issue for determination is whether petitioner was overpaid by the CC program in the total amount of \$13,601.68 during the time period February 3, 2007 through August 2, 2008.

**PARTIES IN INTEREST:**

*Petitioner:*

Agape Love Christian Child  
Development Center

By: Tina Williams, licensee

By: LaTonya Johnson  
AFSCME Local 502  
3427 W. St. Paul Ave.  
Milwaukee, WI 53208

*Respondent:*

Public Assistance Collection Unit  
Department of Workforce Development  
State of Wisconsin  
201 East Washington Avenue  
P.O. Box 8938  
Madison, Wisconsin 53708-8938

By: Kevin Ivory, Child Care Program Specialist

Milwaukee County Department of Human Services  
1220 West Vliet Street  
Milwaukee, Wisconsin 53205

**ADMINISTRATIVE LAW JUDGE:**

Nancy Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner was a CC provider for the CC program during all times relevant to this Decision.

2. Petitioner's day care center was known as Agape Love Christian Child Development Center (Agape), and was located at 4710 N. 42<sup>nd</sup> Street, Milwaukee, Wisconsin.
3. On August 22, 2008, the county issued written notice to the petitioner, advising that it had been overpaid \$13,601.68 as a CC provider for the *February 3, 2007 through August 2, 2008* period. The rationale for the overpayment determination was that the licensee accepted CC payments for four children "in care" who were actually residing with her. The notice also contained hearing rights information, and the petitioner timely appealed. See Exhibit 14.
4. During the overpayment period, the petitioner was paid CC funds for care provided to the following four children: L.C.H., A.H., H.N, and J.H. Exhibit 13, Negative Adjustment Memo.
5. The licensee resides at the daycare center address. The provider asserts that none of the children resided with her during the 2/3/07– 8/2/08 period.
6. The father of L.C.H. is Conzella Sanford. Mr. Sanford lived with the provider and L.C.H. from at least February 1, 2007, to at least August 2, 2008, and the \$7,015.63 paid in CC for L.C.H. was an overpayment. See Exhibit 13.
7. Conzella Sanford is the grandfather of the children A.H, H.N, and J.H. Their mother, Tanisha Heard, placed the three children in the petitioner's daycare no later than April 6, 2008, and left them in the daycare through at least August 2, 2008. Exhibit 13. The three children were removed from the care of Tanisha Heard effective March 8, 2008, and placed in the care of Conzella Sanford. Exhibit 12. As found above, Mr. Sanford was residing with the petitioner at that time. J.H. was returned to Ms. Heard on April 8, 2008. Exhibits 11, 12. Thus, CC funds paid for the care of J.H. from March 8 through April 7, 2008, were an overpayment. However, the agency did not provide evidence of CC overpayment amounts for J.H. prior to April 6, 2008, so I am unable to include an overpayment amount for this child in the overpayment total. There is no credible evidence in the record that the two other children were returned to Ms. Heard during the March 8, 2008 through August 2, 2008, period. The agency presented evidence of the overpayment amounts for these two children beginning with April 6, 2008, and the listed amounts, which total \$4,977.40, are an overpayment. Exhibit 13.
8. The testimony of licensee Tina Williams was not credible. The affidavit of Tanisha Heard regarding her children's placement was not credible. The written statement of Conzella Sanford regarding his residence was not credible.

### **DISCUSSION**

A child care administrative agency must take all reasonable steps necessary to recoup or recover any overpayments for CC services for which the provider was responsible, or overpayments caused by administrative error that benefited the provider. Wis. Stat. § 49.195(3) (2007-08); *Child Care Manual (Manual)*, §2.3.2, at <http://www.dcf.wisconsin.gov/childcare/wishares/>.

In this case the county alleges that the petitioner was paid CC funds to care for the children identified in Finding #4 during the overpayment period, and that those children were living with the licensee and their parent/guardian, Mr. Sanford. CC may not be authorized for a provider who lives with the subject children. *Manual*, §3.6.1.4. The county has the burden of proving, by a preponderance of the credible evidence, that the provider received more CC funds than she was entitled to receive. The petitioner does not contest that it was paid the CC amounts shown in Exhibit 13 during the overpayment period. Rather, the licensee denies that the children and Conzella Sanford were living with her during the overpayment period.

The agency formed the belief that Sanford was residing with the provider during the overpayment period because he listed her address as his own when he submitted CC parent eligibility reviews on February 2, 2007, and November 29, 2007. In connection with the reviews, he submitted rent receipts for the provider's address (signed by Ms. Williams as landlord) for himself for January, May, and June, 2007.

Exhibits 1, 2, 3, 4, 5. Sanford also lists the petitioner's address as his address as the registered agent of his business, Living Insight School of Ministry Incorporated. Exhibit 6. Sanford did not report to the agency that his address was other than the petitioner's until September, 2008 (after the overpayment notice was issued).

The petitioner submitted a short affidavit from Sanford prior to hearing, in which he implies that he was not living at the petitioner's address during the overpayment period (he did not say where he *was* living). Exhibit 21. Because it seemed obvious that Sanford either repeatedly lied to the agency during the overpayment period, or that he is lying now, this judge specifically asked that Sanford be produced to testify at hearing. He did not appear. When this judge asked Williams why Sanford was not present to clear this matter up, she responded: "I wasn't able to get in touch with him."

The licensee testified that Sanford did not live with her during the overpayment period. She asserts that he lived throughout the period at N61W14275 Brookside Dr., Menomonee Falls, WI 53051. To corroborate her testimony, she produced copies of credit union statements for a lightly used checking account and auto loan repayments for Sanford, from February, June and September, 2008, showing the Brookside Dr. address. Exhibits 17, 18, 19. It is not credible that the licensee could not locate Sanford for hearing, yet she was able to obtain from him selected personal banking statements for several months in 2008. The preponderance of the credible evidence in this record supports the finding that Sanford lived at the provider's address throughout the overpayment period.

As for Tanisha Heard, she too appears to be "truth-challenged." She submitted an affidavit in which she declares that she has had her three children with her from birth through at least August 2, 2008. Exhibit 20. However, the agency produced a letter on Department of Health and Family Services stationery, dated May 1, 2008, declaring that J.H. was returned to Ms. Heard on April 8, 2008. See letter by Rebecca Ehrick, case manager, Exhibit 11. The child could not be "returned" if he had not first been removed. The agency also produced a state form HCF 101085, signed by state worker L. Malle, confirming the removal from Heard of all three children on March 8, 2008. Exhibit 12. The only rebuttal to this information was Heard's self-serving, incredible affidavit, and Williams' self-serving, incredible testimony.

To summarize, the agency has adequately established the petitioner was overpaid all funds for the child of Sanford, L.C.H., and that she was overpaid for the other children as described in Finding #7.

### **CONCLUSIONS OF LAW**

1. The petitioner provider was overpaid \$11,993.03 (\$7,015.63 + \$4,977.40) in CC funds for the February 3, 2007 through August 2, 2008 period.

**NOW, THEREFORE, it is ORDERED**

That the petition be remanded to the agency with instructions to correct the overpayment amount for the period downward to \$11,993.03. In all other respects, the petition is dismissed.

### **NOTICE TO RECIPIENTS OF THIS DECISION:**

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH.

If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like

to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as "PARTIES IN INTEREST."

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Children and Families for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

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Nancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals

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