



eligibility requirements may elect to receive services from participating Child Care Learning Centers, who are in turn reimbursed for providing child care services to eligible families. Beginning in 2012, DECAL became the state agency responsible for administering the CAPS Program. The CAPS Program remains governed by the policies contained in the Policies and Procedures Manual for the Childcare and Parent Services Program (hereinafter “the CAPS Policy Manual”), which was promulgated by the Department of Human Services, the state agency formerly responsible for administering the program. (Testimony of Tamara Hall).

2.

Upon a determination that a family is eligible to participate in the CAPS Program, a case manager assists the family in selecting an approved provider of child care services. After the family selects a provider of child care services, the case manager creates a Certificate of Authorization. The Certificate of Authorization details the family’s eligibility status, the rate at which DECAL will reimburse services, and the dates for which payment is authorized.<sup>1</sup> The Certificate is designated for the provider and is not transferable; if there is a change in provider, the Certificate will be terminated. (Testimony of Tamara Hall).

3.

In order to participate in the CAPS Program, providers of child care services must be licensed by DECAL or otherwise exempted from licensing requirements. Providers enter into a Child Care Provider Agreement with DECAL as a prerequisite to participation in the CAPS Program. The Child Care Provider Agreement includes a record-keeping provision requiring the provider to maintain, at a minimum, “daily electronic or physical attendance records for children in care [and] sign-in/sign-out logs with the parent’s or responsible adult’s electronic or original signature each day the child attends care with the provider. . . .” The Agreement further provides

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<sup>1</sup> See also 42 U.S.C. 9858n (2).

that “DHS/CAPS may refuse to pay a child care subsidy for the child or may recover or recoup the amount of any child care subsidy paid for any period in which the Provider fails to maintain either electronic or physical attendance records and sign-in/sign-out logs . . . .” The record-keeping requirements are also expressed in the CAPS Policy Manual. (Respondent Exhibits 7, 8).

4.

Once approved to participate in the CAPS Program, child care learning centers may be subsidized for providing services to children in care who are enrolled in the CAPS Program. Centers submit invoices to MAXIMUS, the provider payment management company for the CAPS Program, for processing of payment. In order for a Center to obtain subsidies for child care services, the child must actually attend the Center at least one day during the week for which the Center seeks reimbursement (the “service week”). DECAL is authorized to reimburse the provider for the entire service week “as if the child were in attendance for the entire period” if the child attends the Center at least one day during the service week. (Testimony of Amy Hill; CAPS Policy Manual § 6611).

*Inspiration Station Academy*

5.

Inspiration Station is a licensed Child Care Learning Center located in Atlanta, Georgia. Brent Sobol is the owner of Inspiration Station. Sobol took ownership of Inspiration Station in November 2012. (Testimony of Brent Sobol; Respondent Exhibit 8).

6.

In February 2013, Inspiration Station was approved as a CAPS Provider and began receiving payments for providing services to CAPS-eligible children in its care. Contemporaneously with its enrollment as a CAPS Provider, Inspiration Station entered into a

Child Care Provider Agreement (hereinafter “the Agreement”) with DECAL on March 8, 2013. Sobol and Kelly Brow, Inspiration Station’s director at the time, signed the Agreement. (Respondent Exhibit 8).

*DECAL’s Audit of Inspiration Station*

7.

On or about September 23, 2013, DECAL’s Audits and Compliance Division commenced an investigation into Inspiration Station based on a report that Inspiration Station was billing for children who were not actually in attendance. Amy Hill, a Compliance Examiner with the Audits and Compliance Division, conducted this investigation. (Testimony of Amy Hill).

8.

Hill had previously visited Inspiration Station on September 18, 2013 as part of an investigation into Education Station, a child care learning center that formerly operated at the same location as Inspiration Station. During this site visit, Hill spoke with Inspiration Station’s director, Kelly Brow, took a tour of the facility, and reviewed records pertinent to DECAL’s investigation into Education Station, some of which were still maintained at Inspiration Station. Hill observed no rule violations on the part of Inspiration Station during this site visit. (Testimony of Amy Hill).

9.

On or about March 17, 2014, Hill sent a formal Record Request to Inspiration Station. Hill requested copies of daily classroom attendance records, sign-in/sign-out sheets, and rate sheets for all age groups for the period of February 1, 2013 through September 30, 2013 (hereinafter “the Audit Period”). (Testimony of Amy Hill; Respondent Exhibit 9).

10.

In response to the Record Request, Inspiration Station provided DECAL with copies of sign-in/sign-out sheets for the Audit Period. However, Inspiration Station could not provide DECAL with attendance records, as the center did not maintain such documentation during the Audit Period. Although CAPS Policy requires providers to maintain both attendance records and sign-in/sign-out sheets, DECAL opted to accept sign-in/sign-out sheets as sufficient evidence that a child attended the center. (Testimony of Amy Hill; Respondent Exhibits 9, 11).

11.

For each service week during the Audit Period, Hill compared the sign-in/sign-out sheets with the invoices submitted by Inspiration Station to MAXIMUS in order to ascertain whether the children for whom Inspiration Station billed during each service week actually were in attendance at the center. Pursuant to CAPS Policy, if Hill determined that a child was signed in and out of the center one day during a service week, she gave the center credit for the entire service week. (Testimony of Amy Hill; Respondent Exhibits 7, 8; Petitioner Exhibit 15).

12.

After completing her review, Hill determined that Inspiration Station had received overpayments totaling \$8,012.00 from April 1, 2013 to September 23, 2013.<sup>2</sup> Approximately 95% of the overpayment amount was attributable to Inspiration Station's billing for providing child care services to children whose attendance at the center was unsupported by the sign-in/sign-out sheets. For the service week beginning on April 1, 2013, for example, Inspiration Station billed for services purportedly provided to one child, "CB", but submitted no documentation evidencing that CB attended the center any day during the service week. Hill determined that overpayments of this kind occurred in eighty-seven (87) instances from April 1,

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<sup>2</sup> Hill found no overpayment for February or March 2013, as all CAPS recipients for whom Inspiration Station billed were listed on the sign-in/sign-out sheets for service weeks during those months. (Testimony of Amy Hill).

2013 to September 23, 2013. The remaining 5% of the overpayment amount was due to Inspiration Station's billing for two part-time days during a service week that allowed for only one part-time day. Hill generated an Overpayment Worksheet listing each service week for which an overpayment was issued to Inspiration Station and identifying the children whose attendance could not be verified for each service week. (Testimony of Amy Hill; Respondent Exhibits 5, 6, 11).

*Inspiration Station's Appeal*

13.

In a letter dated April 8, 2014, DECAL notified Sobol of its determination that Inspiration Station had received an overpayment for child care services from April 1, 2013 to September 23, 2013 and that DECAL would seek recoupment from Inspiration Station in the amount of \$8,012.00. On April 18, 2014, Inspiration Station requested reconsideration of DECAL's determination of an overpayment. After Inspiration Station submitted no documentation that would warrant reduction of the overpayment, DECAL affirmed its original findings on April 21, 2014. On April 25, 2014, Inspiration Station requested a hearing, asserting that the overpayment amount calculated by DECAL was incorrect and that "additional mitigating factors" merited reduction of the overpayment amount. (Testimony of Amy Hill; Respondent Exhibits 1, 2, 3, 4).

14.

While the hearing on this matter was pending, Inspiration Station submitted additional documentation to DECAL. This documentation included notarized affidavits from parents asserting that their children attended the center on the relevant dates. The affidavits are dated April 29, 2014 and May 28, 2014. DECAL did not accept the affidavits as documentation that the children referenced therein actually attended Inspiration Station on the relevant dates.

(Testimony of Amy Hill; Petitioner Exhibit 18).

15.

At the hearing on this matter, Hill testified that although DECAL will accept documentation other than sign-in/sign-out sheets as valid evidence that a child was in attendance, such documentation must typically be maintained by the Center. Hill cited transportation logs and nutrition program records as examples of documentation of attendance that DECAL would accept in lieu of actual attendance records or sign-in/sign-out sheets. (Testimony of Amy Hill).

16.

Inspiration Station also submitted additional sign-in/sign-out sheets to DECAL during the pendency of the hearing. Hill disregarded sign-in/sign-out sheets with the same dates as those reviewed during the original audit. The sign-in/sign-out sheets did not evidence that the children for whom Inspiration Station had billed MAXIMUS attended the center during the disputed service weeks. Accordingly, DECAL did not alter its original calculation of the overpayment amount. (Testimony of Amy Hill; Petitioner Exhibit 15).

17.

Inspiration Station submitted the above-referenced sign-in/sign-out sheets into evidence at the hearing on this matter. Inspiration Station cited what appeared to be an erroneously-dated sign-in/sign-out sheet<sup>3</sup> to suggest that DECAL's calculation of the overpayment amount was inaccurate because incorrectly dated sign-in/sign-out sheets could have been misconstrued as duplicates and discounted in the audit. Hill acknowledged that she disregarded sign-in/sign-out

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<sup>3</sup> Two of the sign-in/sign-out sheets submitted into evidence by Inspiration Station are dated "8/14/2013." In several instances, a child's name appears on both sign-in/sign-out sheets with a morning sign-in time written next to the child's name in the column labeled "Time In." Although, taken at face value, the sign-in/sign-out sheets indicate that the same child was signed into the facility in the morning and then, minutes later, signed in again, the more likely explanation is that a staff member wrote the incorrect date on one of the sign-in/sign-out sheets. (Petitioner Exhibit 15).

sheets with dates that she had already reviewed, but explained that Inspiration Station was given credit for the entire service week if a child's name appeared on a sign-in/sign-out sheet for one date during the service week. Inspiration Station introduced no sign-in/sign-out sheets which would indicate that the children included in DECAL's calculation of the overpayment actually attended the center during the disputed service weeks. (Testimony of Amy Hill; Respondent Exhibit 6; Petitioner Exhibit 15).

18.

Sobol testified at the hearing that, when he took ownership of Inspiration Station in November 2012, he was given assurances by DECAL, the prior owner of the center, and MAXIMUS, that Inspiration Station would be reimbursed for the child care services it provided to CAPS recipients from November 2012 to March 2013, the period prior to Inspiration Station's enrollment as a CAPS Provider. According to Sobol, his decision to take over ownership of Inspiration Station and make extensive renovations to the center was motivated by assurances that the center would eventually be reimbursed by DECAL. (Testimony of Brent Sobol).

19.

In its post-hearing brief, Inspiration Station reiterated its argument that the affidavits and sign-in/sign-out sheets submitted at the hearing definitively established that some of the children for whom DECAL determined an overpayment attended the center. Inspiration Station calculated that such evidence merited reduction of the overpayment amount by \$2,626.00. Inspiration Station posited that any overpayment amount should be further offset by the amount of subsidies owed to Inspiration Station for child care services provided to CAPS enrollees from November 2012 to March 2013, citing the principle of promissory estoppel. Citing principles of contract law, Inspiration Station argued that any failure on its part to maintain adequate documentation did not relieve DECAL of its obligation under the Agreement to provide



reimbursement for services rendered during the Audit Period, and that DECAL was effectively seeking “back-pay for services properly rendered.” (Respondent’s Brief in Support of Hearing filed September 5, 2014).

20.

DECAL argued in its post-hearing brief that Inspiration Station was not entitled to an offset for any services it provided to CAPS recipients prior to its enrollment as a CAPS Provider. DECAL contended that Inspiration Station’s contract and promissory estoppel arguments amounted to requests for equitable remedies that fell outside the jurisdiction of this Court, that they were precluded due to Inspiration Station’s failure to raise such arguments prior to court-ordered deadline for prehearing motions, and that they amounted to untimely assertions of counter-claims. (Respondent’s Reply Brief filed September 5, 2014).

### III. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the undersigned makes the following Conclusions of Law:

**A. DECAL is authorized to seek recoupment for overpayments to CAPS providers.**

1.

The CAPS Program is funded by the Child Care and Development Fund (CCDF), a federal block grant to states authorized by the Child Care and Development Grant Act and Section 418 of the Social Security Act “for the purpose of providing child care assistance to needy families.” 42 U.S.C. § 618; see also 42 U.S.C. § 9858 et seq. Participating states are required to develop a Child Care Development Fund Plan to be approved by the Secretary of Health and Human Services and designate a “lead agency” responsible for administering the Child Care Development Fund. 42 U.S.C. § 9858b; 45 C.F.R. 98.17. In Georgia, DECAL is the lead agency tasked with administering programs funded by the CCDF, including CAPS. Part of

DECAL's responsibilities include "[p]romulgat[ing] all rules and regulations governing overall administration" of the Child Care Development and State Plan. 45 C.F.R. 98.11; see also Ga. Comp. R. & Regs. 591-2-1-.06.

2.

As a condition of receipt of the CCDF, DECAL must administer the CAPS Program pursuant to requirements expressed in the Child Care and Development Grant Act and regulations promulgated by the United States Department of Health and Human Services in 45 C.F.R. 98. O.C.G.A. § 20-1A-4 (2014); O.C.G.A. § 20-1A-8; Ga. Comp. R. & Regs. 591-2-1-.06. These regulations require lead agencies to adhere to "[f]iscal control and accounting procedures" to ensure that all funds are expended in conformance with program criteria. 42 U.S.C. § 9858i; 45 C.F.R. § 98.67. Although recipient states must conform to the parameters outlined in the governing federal law, they are free to "impose additional limitations or conditions on contracts or grants funded under [the Child Care and Development Grant Act]." 42 U.S.C. § 9858d. DECAL administers the CAPS Program in accordance with the CAPS Policy Manual issued by the Department of Human Services, the former administering agency for the CAPS Program.

3.

In Georgia, in order to participate in the CAPS Program, providers must agree to "comply with . . . all applicable licensing requirements and policies and procedures of [DECAL], DHS, and DFCS/CAPS." CAPS Policy Manual § 6715. According to DECAL's policies and procedures, providers must maintain "daily electronic or physical attendance records for children in care[] [and] sign-in/sign-out logs with the parent's or responsible adult's electronic or original signature each day the child attends care with the provider." Id. The CAPS Policy Manual further provides that "DHS/CAPS may refuse to pay a child care subsidy for the child or may

recover or recoup the amount of any child care subsidy paid for any period in which the Provider fails to maintain either electronic or physical attendance records and sign-in/sign-out logs with the parent's or responsible adult's original or electronic signature." Id. These provisions are repeated, in their entirety, in the Provider Agreement entered into by Inspiration Station's principals as a prerequisite to Inspiration Station's enrollment as a CAPS Provider.

**B. DECAL met its burden of establishing that Inspiration Station was issued overpayments for which recoupment is authorized.**

4.

DECAL bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

5.

In the present case, DECAL proved by a preponderance of the evidence that Inspiration Station failed to meet the record-keeping requirement expressed in both the CAPS Policy Manual and the Provider Agreement. Inspiration Station acknowledged that it did not maintain attendance records during the Audit Period. Moreover, Inspiration Station failed to produce sign-in/sign-out sheets evidencing that any of the children for whom DECAL assessed an overpayment were actually in attendance during the disputed service weeks. Indeed, Inspiration Station produced no documentation that effectively refutes DECAL's assessment of the overpayment. The children for whom DECAL sought verification of attendance do not appear on the sign-in/sign-out sheets tendered into evidence by Inspiration Station.

6.

Although DECAL indicated that it would accept alternative documentation of attendance, it was entitled to limit such evidence to that which was generated contemporaneously with the child's attendance, such as the nutrition program and transportation records cited by Hill. It was

certainly not obligated to accept the affidavits submitted by Inspiration Station as documentation of attendance, since post hoc affirmations that the children attended the facility are much less reliable than records kept in the ordinary course of business.

7.

Inspiration Station's failure to maintain the required documentation does not amount to a mere technical violation. In the absence of adequate supporting documentation, DECAL has no means by which to ascertain that the provider is actually performing the billed-for services and cannot effectively ensure that it is expending funds in conformity with federal program requirements.

8.

In its post-hearing brief, Inspiration Station proffered several theories in support of its position that, any breach notwithstanding, DECAL was not permitted to recoup the overpayment amount or, at the very least, that the overpayment amount should be reduced. These arguments are addressed *infra*.

**C. Inspiration Station's Promissory Estoppel Argument is Without Merit.**

9.

Inspiration Station argues that the overpayment amount should be reduced under a promissory estoppel theory. The equitable doctrine of promissory estoppel is codified in Section 13-3-44 of the Georgia Code, which provides that "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." O.C.G.A. § 13-3-44 (2014). Ordinarily, the doctrine is asserted offensively against the promisor as a claim for damages. 28 AM. JUR. 2d *Estoppel and Waiver* § 34 (2014). In the present case, however, Inspiration Station posits that the overpayment

amount should be reduced by damages owed to it under a promissory estoppel theory. Inspiration Station articulated no authority by which this administrative tribunal could off-set the overpayment amount by the value of the pre-enrollment services. However, even assuming that the undersigned has the authority to reduce the overpayment amount by promissory estoppel damages and that Inspiration Station's claims are within the scope of the present matter, Inspiration Station introduced insufficient evidence to establish that it is owed any reduction of the overpayment amount under a theory of promissory estoppel.

10.

In order to successfully assert promissory estoppel, the promisee has the burden of proving, by a preponderance of the evidence, that: (1) the other party made certain promises; (2) the other party should have expected the promisee to rely upon those promises; (3) the promisee did in fact rely upon those promises to its detriment; and (4) injustice can be avoided only by enforcement of the promise. Foley Co. v. Warren Engineering, Inc., 804 F. Supp. 1540, 1544 (N.D. Ga. 1992); see also Bedsole v. Action Outdoor Adver. JV, LLC, 325 Ga. App. 194, 199 (2013). "The threshold requirement of a promissory estoppel claim is, of course, that there be some enforceable promise . . . ." Foley Co., 804 F. Supp. at 1544. The party asserting promissory estoppel has the burden of showing that a promise was made. Id. In the present case, Inspiration Station failed to establish that a promise was conveyed to it by a representative of DECAL. Inspiration Station asserts that Sobol was given assurances by an unidentified DECAL representative that the center would receive reimbursement for child care services, but offered no evidence of such assurances other than the vague testimony of Sobol, which is insufficient to establish the existence of a promise, let alone whether the promise was of such a nature as to be enforceable. Ga. Invs. Int'l, Inc. v. Branch Banking & Trust Co., 305 Ga. App. 673, 675 (2010) ("Promissory estoppel does not, however, apply to vague or indefinite promises,

or promises of uncertain duration.”) (citing Mariner Healthcare v. Foster, 280 Ga. App. 406, 412 (2006)). Accordingly, Inspiration Station’s promissory estoppel argument is without merit.

**D. DECAL’s action is not precluded by equitable estoppel or an unjust enrichment theory.**

11.

Inspiration Station argues that it is unfair to collect the overpayment in light of Sobol’s reliance on erroneous statements allegedly made by agency representatives – in other words, it argues that the doctrine of equitable estoppel should preclude DECAL from seeking recoupment. Pretermitted whether it is within this Court’s jurisdiction to adjudicate such claims, and assuming, *arguendo*, that equitable estoppel is generally applicable to actions by DECAL,<sup>4</sup> Inspiration Station failed to establish that the doctrine should prevent recoupment of the overpayment. Under Georgia law, a party may successfully invoke the doctrine of equitable estoppel only where they show “some intended deception in the conduct or declarations of the party to be estopped, or such gross negligence as to amount to constructive fraud,” which misled the invoking party to his or her injury. O.C.G.A. § 24-14-29 (2014).

12.

Equitable estoppel requires: (1) a false representation or concealment of facts; (2) that the facts were within the knowledge of the misrepresenting or concealing party; (3) that the person affected thereby was ignorant of the truth; (4) that the person seeking to influence the other acted intentionally for that purpose; and (5) that the affected person was induced to act by reason of such conduct of the other. Hunnicut v. S. Farm Bureau Life Ins. Co., 256 Ga. 611, 613 (1987).

<sup>4</sup> See Ben Hill County Bd. of Educ. v. Davis, 270 Ga. 452 (1999), citing City of Warner Robins v. Rushing, 259 Ga. 348-49 (1989) (equitable estoppel does not lie against the State for the unauthorized acts of its agents, whether they be negligent or intentional); Rose v. Bowen, 710 F.Supp. 1357 (N.D. Ga. 1989), citing Heckler v. Community Health Services, 467 U.S. 51, 63 (1984) (in social security benefits case, court held that the assessment and distribution of benefits is an exercise of the agency’s sovereign powers and equitable estoppel is not a remedy available to plaintiff); East Point v. Upchurch Packing Co., 58 Ga. App. 829, 832 (1938); Bibb Cnty v. Ga. Power Co., 241 Ga. App. 131, 137 (1991). See also Office of Personnel Management v. Richmond, 496 U.S. 414, 427 (1990) (equitable estoppel cannot be applied to require federal government to pay benefits not authorized by law).

The evidentiary record in this matter does not support a finding that DECAL made false representations to Sobol or any of Inspiration Station's principals, or that DECAL did so with the intent to influence Inspiration Station. Therefore, the recoupment is not precluded by equitable estoppel.

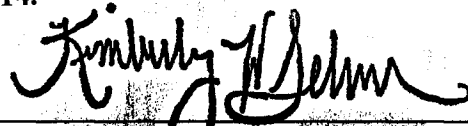
13.

In its post-hearing brief, Inspiration Station mentioned unjust enrichment, and argued that, any breach notwithstanding, DECAL should not be permitted to recoup payments "for services properly rendered." "Unjust enrichment is an equitable principle that may be applied when there is no valid written contract between the parties, but the plaintiff has conferred a benefit to the defendant that would result in that party's unjust enrichment unless it compensates the plaintiff." Ga. Dep't of Cmty. Health v. Data Inquiry, LLC, 313 Ga. App. 683, 687 (2012). As discussed *supra*, Inspiration Station introduced insufficient competent evidence to establish that the services for which DECAL seeks reimbursement were actually provided. In addition, there is a valid written agreement between DECAL and Inspiration Station that clearly contemplates the recoupment of payments by DECAL when a child care center does not properly document a child's attendance. Accordingly, Inspiration Station's argument that DECAL would be unjustly enriched by the recoupment is without merit.

**IV. DECISION**

In accordance with the foregoing Findings of Fact and Conclusions of Law, DECAL's determination of an overpayment and its decision to seek recoupment in the amount of \$8,012.00 from Petitioner is hereby **AFFIRMED**.

**SO ORDERED**, this 14<sup>th</sup> day of October, 2014.



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**KIMBERLY W. SCHROER**  
Administrative Law Judge