

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**KIDZ OF PARADISE,
Petitioner,**

v.

**GEORGIA DEPARTMENT OF EARLY
CARE AND LEARNING,
Respondent.**

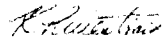
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INITIAL DECISION

I. INTRODUCTION



Kevin Westray, Legal Assistant

Petitioner Kidz of Paradise appeals the decision of Respondent Georgia Department of Early Care and Learning (DECAL) to seek recoupment of payments made to Kidz of Paradise under the Childcare and Parent Services (CAPS) Program. The hearing on this matter was held on October 6, 2014 before the undersigned Administrative Law Judge of the Office of State Administrative Hearings (OSAH). Kidz of Paradise was represented by its owner, Dakiefa Golden. DECAL was represented by Kimberly Alexander, Esq.

For the reasons set forth below, Respondent's action is hereby **AFFIRMED**.

II. FINDINGS OF FACT

1.

The Childcare and Parent Services Program

CAPS is a state-administered program funded by the federal government that "arranges and provides child care assistance as a support service to low-income families and child protective services (CPS) clients."¹ Through the CAPS Program, families who meet eligibility requirements may elect to receive services from qualifying child care learning centers, who are

¹ CAPS Policy Manual § 6001.

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 (DHS), 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.² 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. By entering into the Agreement, the Provider consents to comply with all state and federal laws, applicable licensing requirements, and policies and procedures of DECAL, DHS, and DFCS. The Agreement also provides that DHS or DFCS/CAPS may recover or recoup all CAPS payments for child care provided when the Provider is not in compliance with state or federal law or Program policies. The foregoing provisions are also expressed in the CAPS

² See also 42 U.S.C. 9858n (2).

Policy Manual. (Respondent Exhibits 1, 2).

4.

Providers may also be reimbursed for child care services provided to children in foster care, or “Supplemental Supervision,” through the CAPS Program.³ The purpose of CAPS Supplemental Supervision is to enable the foster parent to obtain assistive child care services so that the he or she may “work and attend monthly foster parent training.” Children in foster care who are potentially eligible for Supplemental Supervision are referred to the CAPS Program by a Social Services Case Worker. Thereafter, a CAPS Case Manager makes an eligibility determination, evaluating factors such the foster parent’s need for “regular, on-going child care” services.⁴ If the CAPS Case Manager determines that the eligibility criteria for the Program are satisfied, he or she will contact the foster parent, advise the foster parent on choosing a provider, and explain the CAPS Program Requirements. After the foster parent selects an eligible childcare provider, MAXIMUS issues a Certificate of Authorization, whereupon the selected provider may receive payments for child care services provided to the foster child. (Respondent Exhibit 2; Testimony of Tamara Hall).

5.

Ordinarily, CAPS only *subsidizes* child care services; parents are expected to pay a portion of the rate charged by the child care learning center. However, with regard to child care services provided to foster children, the state is considered the “parent,” and DECAL covers the entire cost of child care services, including the portion of the rate for which the parent would ordinarily be responsible.⁵ (Respondent Exhibit 2; Testimony of Tamara Hall).

³ 45 C.F.R. § 98.20(a)(3); 63 Fed. Reg. 39,936, 39,948 (1998).

⁴ The foster parent’s income does not factor into the eligibility determination. (Respondent Exhibit 2).

⁵ See also 45 C.F.R. §§ 98.20(a)(3), 98.42.

6.

Pursuant to Section 6308 of the CAPS Policy Manual (hereinafter "Policy 6308"), "[f]oster parents who may benefit financially from the ownership or operation of a child care facility cannot be reimbursed for child care provided to foster children who live the same home." In other words, the CAPS Program will not reimburse a foster parent who owns a child care learning center, for services provided by the foster parent's center, to foster children who have been placed in the foster parent/owner's home. (Respondent Exhibit 2; Testimony of Tamara Hall).

Kidz of Paradise Academy

7.

Kidz of Paradise (hereinafter "the Center") is a licensed Child Care Learning Center located in Jonesboro, Georgia. Dakiefa Golden is the Center's owner. The Center entered into a Child Care Provider Agreement with DHS on August 8, 2011 and, during the period relevant to this Decision, received payments from DECAL for providing services to children enrolled in the CAPS Program. (Respondent Exhibit 1; Testimony of Dakiefa Golden).

8.

During the period relevant to this Decision, Dakiefa Golden was the foster parent of four children, all of whom attended the Center owned and operated by her. At the time they attended the Center, the four foster children were enrolled in the CAPS Program. Accordingly, the child care services provided to the four foster children at the Center were paid for by DECAL. (Respondent Exhibits 7, 9, 10, 11; Testimony of Dakiefa Golden; Testimony of Laurie Cook).

DECAL's Audit of Kidz of Paradise

9.

DECAL's Audits and Compliance Division commenced an investigation into the Center

on or about March 28, 2014 based upon a referral from Clayton County DFCS. In the referral, DFCS reported that the Center was billing for services provided to four foster children, (identified by name in the referral) who were living in the home of the Center's owner, Golden. The referral further provided that the Center submitted bills for multiple certificates for the same children during one service week. The estimated period of overpayment, according to the referral, was from March 25, 2013 through March 23, 2014. (Respondent Exhibit 3; Testimony of Leigh Ann Hendrix).

10.

Based upon the referral from DFCS, Amy Hill, a Compliance Examiner with the Audits and Compliance Division, sent a formal Record Request to the Center. Hill requested copies of daily classroom attendance records, sign-in/sign-out logs, and rate sheets for all age groups for the period of March 4, 2013 through March 30, 2014 (hereinafter "the Audit Period"). (Respondent Exhibit 4; Testimony of Leigh Ann Hendrix).

11.

After the Center supplied the requested documentation, Laurie Cook, another Compliance Manager with DECAL, commenced an Audit. This Audit entailed a review of the documentation maintained by the Center and invoices that the Center submitted electronically to MAXIMUS. Cook pulled an "extract," a spreadsheet of the Center's billing history, from MAXIMUS. The extract is generated from the electronic invoices submitted to MAXIMUS, and provides detailed billing information, including the name of each child for whom the Center billed during a service week. Cook compared this extract to the Center's records in order to determine whether the Center had been issued overpayments during the Audit Period. (Respondent Exhibits 11, 12; Testimony of Laurie Cook).

12.

Cook determined that the Center had received overpayments totaling \$30,455.00 during the Audit Period. Upon verifying that Golden was the foster parent of four of the children listed in the extract during the Audit Period and that Golden was the owner of the Center during that same time frame, Cook determined an overpayment for each service week for which the Center billed for care provided to the four foster children. The remainder of the overpayment amount was attributable to instances in which the Center billed for multiple certificates for the same child during the same service week and in which the provider billed for children whose attendance at the Center was not supported by attendance records or sign-in/sign-out logs. Cook also found an overpayment for one service week for which the Center billed for one part-time day after she determined that there were no holidays or early release days that would justify billing at the part-time rate. Cook generated an overpayment worksheet listing each service week for which an overpayment was issued to the Center, the name of each child for whom the overpayment was issued, and the reason for the determination of the overpayment. (Testimony of Laurie Cook).

13.

In a letter dated June 2, 2014, DECAL notified Golden of its determination that the Center had received an overpayment of \$30,455.00. DECAL attached a copy of the above-mentioned overpayment worksheet to this letter. (Respondent Exhibit 6).

14.

Golden requested that DECAL reconsider its determination of an overpayment in two letters dated June 4, 2014. In the first letter, Golden asserted that the Center had billed for one part-time day during one service week due to an early release day in the Clayton County school system and that DECAL's determination of an overpayment in that regard was therefore

incorrect. In the second letter, Golden asserted that she was unaware of Policy 6308. Golden did not mention the other reasons for DECAL's determination of an overpayment in her requests for reconsideration. (Respondent Exhibit 7).

15.

Upon receipt of Golden's requests for reconsideration, Cook reviewed the calendar for Clayton County schools and verified Golden's claims of an early release day during the disputed service week. She gave the Center credit for the part-time days during the disputed service week and adjusted the overpayment amount accordingly. However, Cook did not otherwise alter her original determination of the overpayment amount. (Testimony of Laurie Cook).

16.

After applying the above-described adjustment, Cook determined a revised overpayment amount of \$29,580.00. Approximately 95% of the revised overpayment amount was attributable to the Center's billing and receipt of reimbursement for child care services provided to the four foster children in the care of its owner. Hill determined that overpayments of this kind occurred in two hundred and sixteen (216) instances during the Audit Period. Approximately 3% of the overpayment amount was due to the Center's billing for two certificates for the same child for the same service week. The remaining 2% of the overpayment amount was attributable to instances in which the Center billed for services provided to children whose attendance could not be verified from attendance records for the service week. (Respondent Exhibit 10; Testimony of Laurie Cook).

17.

DECAL notified Golden of the revised overpayment amount in a letter dated June 10, 2014, whereupon Golden submitted a timely hearing request. Golden attached a copy of her letter requesting reconsideration of the overpayment amount attributable to payments that the

Center was not eligible to receive due to the prohibition expressed in Policy 6308. Golden did not dispute the other instances of alleged improper billing that contributed to DECAL's calculation of the overpayment amount in her hearing request. (Respondent Exhibits 9, 10, 11).

18.

At the hearing on this matter, Golden acknowledged that, during the Audit Period, the four foster children were in her care and attended the Center that she owned. However, she asserted that DECAL's proposed adverse action was unwarranted inasmuch as she was unaware of Policy 6308. (Testimony of Dakiefa Golden).

III. CONCLUSIONS OF LAW

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

1.

DECAL bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

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.

3.

As a condition of receipt of the CCDF, states 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. 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.

4.

Federal regulations governing the CAPS Program require lead agencies to recover reimbursements made to providers as a result of fraud. 45 C.F.R. § 98.60(i); 72 Fed. Reg. 50,889, 50,895 (2007). However, lead agencies are given discretion as to whether to recover or recoup improper payments that are not the result of fraud, such as where the state erroneously makes a payment to an ineligible recipient. 72 Fed. Reg. 50,889, 50,895 (2007). Although states are not obligated to recover improper payments, the federal government will disallow all improperly spent funds, regardless of whether the state pursues recovery. 45 C.F.R. § 98.66(a); 72 Fed. Reg. 50,889, 50,895 (2007). In order to ensure that funds are expended in accordance with program criteria, the governing regulations also impose a reporting requirement on lead agencies. 45 C.F.R. § 98.70-.71.

5.

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 O.C.G.A. § 20-1A-4 (2014); O.C.G.A. § 20-1A-8; Ga. Comp. R. & Regs. 591-2-1-.06. 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.

6.

According to the CAPS Policy Manual, providers must agree to “comply with . . . all applicable licensing requirements and policies and procedures of [DECAL] . . .” and “fulfill all of the requirements of the CAPS Program as set out in the [CAPS Policy] Manual . . .” in order to participate in the CAPS Program. CAPS Policy Manual § 6715. The CAPS Policy Manual provides that “DHS or DFCS/CAPS may recover or recoup all payments made by DFCS/CAPS or a county department for child care provided when the Provider is not in compliance with . . . policies of [DECAL] or all applicable policies and procedures of DHS and DFCS/CAPS” Id. The Manual further provides that DECAL may “recover any overpayment amounts which the Provider received as a result of the Provider’s error or the error of DFCS/CAPS or its provider management payment agent.” Id. These provisions are repeated, in their entirety, in the Provider Agreement entered into by the Center’s principals as a prerequisite to the Center’s participation in the CAPS Program.

7.

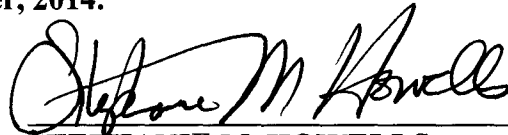
Section 6308 of the CAPS Policy Manual prohibits the payment of funds to a Center for child care services provided to foster children in the care of the Center’s owner. CAPS Policy Manual § 6308. Therefore, all reimbursement payments made to the Center for child care services provided to the four foster children in the care of Golden were contrary to CAPS Program policy. In the present case, Golden does not dispute: (1) that she was the owner of the

Center during the Audit Period, (2) that she was the foster parent of four of the children who attended the Center during the Audit Period, or (3) that the Center received reimbursement for child care services provided to the four foster children. Accordingly, regardless of whether these payments may be attributed to agency error or to a knowing violation on the part of Golden, DECAL is entitled to recover the entire overpayment amount pursuant to its discretion as the lead agency administering the CAPS Program, the CAPS Policy Manual, and the terms of the Agreement. See also Mt. Sinai Hosp., Inc. v. Weinberger, 517 F. 2d 329, 337 (5th Cir. 1975) (recognizing inherent authority of the government to recoup illegal or improper disbursements of public funds where recovery is not otherwise prohibited by statute).

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 \$29,580.00 from Petitioner are hereby **AFFIRMED**.

SO ORDERED, this 3rd day of November, 2014.



STEPHANIE M. HOWELLS
Administrative Law Judge