

STATE OF WISCONSIN CLAIMS BOARD

On October 18, 2022 the State of Wisconsin Claims Board met via Zoom videoconference and considered the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Mario Victoria Vasquez	Innocent Convict Compensation	\$1,214,600.00

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
2. Mercy Health Systems and MercyCare Insurance Co.	Department of Health Services	\$3,069,168.00
3. Jason Edmonson	Department of Corrections	\$741.78
4. Frederick A. Morris	Department of Corrections	\$270.04
5. Frederick A. Morris	Department of Corrections	\$116.79
6. Mark A. Stephens	Department of Corrections	\$5,910.40
7. Antoine B. Lee	Department of Corrections	\$1,480.48
8. Kevin Burkes	Department of Corrections	\$137.15

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Mario Victoria Vasquez. *The Board's conclusion for Mr. Vasquez's claim for innocent convict compensation will be issued in a separate decision.*

3. Mercy Health Systems and MercyCare Insurance of Janesville, Wisconsin (collectively "Mercy") claims \$3,069,168 for Medicaid underpayments for 2017 and 2018 BadgerCare Plus Contract. DHS provides Hospital Access Payments (HAPs) to hospitals that serve large numbers of Medicaid recipients. HAPs are intended to offset the cost of uncompensated care and are based on a hospital's historic use by Medicaid patients. Mercy states that DHS's vendor, Milliman, undercounted Mercy's eligible hospital encounters when calculating HAP rates for 2017, 2018 and 2019. Mercy alleges that it could not have uncovered this error on its own because it was not privy to data showing how Milliman counted hospital admissions until late November 2018, when Milliman began providing additional data. Upon receipt of that additional data, Mercy realized there was an error and contacted DHS. After repeated requests by Mercy, DHS/Milliman investigated the issue and eventually admitted the undercounting error in January 2019. DHS corrected the HAP rate for Mercy's 2019 contract but refuses to correct the error for its 2017 and 2018 contracts, resulting in millions of dollars of underpayments for those years. Mercy believes it has been unfairly penalized by an error it did not cause and could not have prevented and requests that the Claims Board recommend payment of this claim in full to the Wisconsin Legislature.

DHS recommends denial of this claim. DHS believes that Mercy is seeking to retroactively change the terms of its 2017 and 2018 contracts to fix a data counting error that Mercy should have corrected before signing the contracts. DHS notes that the data Milliman used to calculate the HAP rates came from Mercy. DHS also points to the fact that prior to finalizing HAP rates for each contract year, Milliman sent hospital encounter data to Mercy, noting that it was being "provided to the HMOs so they can validate the data." DHS believes that Mercy failed to verify the data as instructed before signing its contracts. DHS believes that even if Milliman was initially at fault for miscounting hospital encounters, Mercy had multiple opportunities to uncover that error and notify DHS prior to signing its contracts. DHS notes that HAPs are funded

by an assessment collected from hospitals and matching federal funds. All available HAP funds are distributed each year, therefore, the funds for 2017 and 2018 are no longer available.

The Board originally heard this matter in its July 21, 2022 meeting, after which it sought additional information from DHS relating to some of its arguments. Following significant deliberation, the Board concludes that this claim raises questions of fact regarding fault, specifically whether the acknowledged error in calculating Mercy's HAP rate was the fault of DHS's contractor, or whether Mercy had a duty and sufficient information to validate and correct the data presented to it by Milliman prior to signing its contract. These issues are better evaluated by a court of law, and therefore, the Board denies payment of this claim.

3. Jason Edmonson of Green Bay, Wisconsin claims \$741.78 for value of television, typewriter, and tablet allegedly damaged by DOC staff. Edmonson believes DOC staff damaged his property in retaliation for his alleged assault on a DOC staff. Edmonson also believes DOC staff did not document the damage to his property because they were trying to cover up their misconduct. Edmonson indicates he was in the Restricted Housing Unit (RHU) from October 22 or November 12, 2021, to January 6, 2022, and believes the damage occurred either during pack-up to RHU, while in storage, or upon transfer back to general population. Edmonson filed an inmate complaint regarding the three items on January 7th, which was ultimately dismissed.

DOC believes there is no evidence of negligence by DOC staff and recommends this claim be denied. DOC's investigation found that the television, typewriter, and tablet were inventoried without any damage following Edmonson's release from RHU on January 6, 2022. Edmonson later received a conduct report for contraband property on January 14, 2022, for a broken television. Edmonson did not contest the conduct report and the television was disposed of at that time. DOC contends the television was in Edmonson's possession from January 6th-14th and any damage likely occurred during that time. DOC contends that the tablet and typewriter were both listed on property inventories dated January 6th and 26th, with no damage indicated. DOC is not aware of damage to the tablet or typewriter, or that staff caused any such damage to these items. Edmonson replaced his typewriter in February 2022, though replacement of an item does not prove of damage by DOC staff. Lastly, DOC contends that if Edmonson were to be awarded damages, he should receive actual value, not purchase price, consistent with DOC 309.20(5) and DAI Policy 310.00.03.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

4. Frederick A. Morris of Green Bay, Wisconsin claims \$270.04 for value of various items allegedly damaged or lost by DOC staff. Specifically, Morris alleges damage to his TV by DOC staff at GBCI during a cell extraction in January 2019, and for a kufi cap, prayer rug, headphones, TV, and shoes allegedly lost by DOC staff at CCI after he was placed in Temporary Lock Up on September 29, 2020. Morris indicates he filed two inmate complaints relevant to this matter. Morris denies DOC's assertion that he received his television on January 30, 2019. Morris alleges that on that date he was in a cell without an electrical outlet and was not allowed to have electronics. Morris believes that DOC staff failed to close his cell door after the alleged incident in September 2020, and therefore allowed other prisoners to enter the cell and steal his property.

DOC believes there is no evidence of negligence by DOC staff and recommends this claim be denied. DOC contends that Morris has failed to properly exhaust his administrative remedies. In March 2019, Morris filed an inmate complaint alleging that his TV was damaged during a cell entry in January 2019. This complaint was rejected as untimely. DOC notes that Morris' TV was returned on January 30, 2019, and he should have been aware of any damage at that time. DOC contends that there is no mention of property damage in documentation of the cell entry nor evidence that staff were negligent. Further, DOC notes the TV was marked as contraband on February 4, 2019, due to damage, therefore, it is likely the damage occurred between January 30th and February 4th, rather than during the cell entry. Morris filed an inmate complaint on October 12, 2020, alleging his TV, headphones, kufi cap, prayer rug, and shoes were missing. DOC ultimately rejected the complaint as moot in November 2020. DOC notes that Morris'

property was inventoried on October 2, 2020 and the items relevant to this claim do not appear on the inventory, indicating they were not in his cell when he was transferred to TLU. DOC contends the items were likely lost, bartered, sold, or otherwise disposed of prior to September 29, 2020.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

5. Frederick A. Morris of Green Bay, Wisconsin claims \$116.76 for value of seven publications allegedly lost by DOC staff. Morris alleges that he had 25 publications in his possession on December 6, 2021, when he was moved to a restricted status that only allowed him to have eight publications. The following day Morris received eight of his publications. He wanted other publications, however, so he claims to have made a written request to the property officer. Morris indicates he was verbally notified by the property officer that there were no other publications belonging to him in storage. Morris contends he filed an inmate complaint at that time. Morris believes that because inmates are routinely searched, it is unlikely that his publications could have been stolen by another prisoner.

DOC believes there is no evidence of negligence by DOC staff and recommends this claim be denied. DOC notes that Morris failed to properly exhaust his administrative remedies by filing a timely inmate complaint regarding this matter. DOC states that Morris was moved to administrative confinement on December 7, 2021, at which time he received all of his property, including publications. DOC notes that Morris' publications could have been lost, stolen, bartered, or otherwise disposed of prior to his property being packed on December 6, 2021.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

6. Mark A. Stephens of Prairie du Chien, Wisconsin claims \$5,910.40 for return of restitution money that DOC deducted from his inmate account. Stephens states that his 2006 Judgment of Conviction clearly indicates that restitution and costs are to be paid as a condition of his extended supervision, not while he is incarcerated. However, DOC began deducting costs and restitution from his account after the passage of 2015 WI Act 355. Stephens alleges those deductions were illegal because Act 355 does not apply to sentences issued prior to July 1, 2016. Stephens filed an inmate complaint regarding the deductions, which DOC denied. Stephens filed a writ of certiorari action challenging DOC's denial of his complaint. The Court of Appeals granted the writ and ordered DOC to reverse its decision. Stephens alleges that the court's order means DOC must reverse the actions which led to his inmate complaint and return the money deducted from his account. Stephens is willing to sign an agreement that he will pay the money back to DOC while he is on extended supervision.

DOC recommends denial of this claim. DOC contends that it had authority under common law to deduct restitution from inmate funds long before the enactment of Act 355, therefore the deductions were not illegal. The Court of Appeals clearly stated that it could neither order DOC to return money to Stephens, nor direct the circuit court to do so. DOC notes that the circuit court denied Stephens' requests for return of the money on the grounds that the court could not order DOC to refund money in response a writ of certiorari. DOC believes payment of this claim would result in an unjust enrichment of Stephens, who has never denied that he owed the money. DOC contends that, because the money has already been disbursed to the victims, Stephens enjoys the benefit of being relieved of this debt. DOC contends that if this claim is granted, there is no mechanism for the State to recoup the money from Stephens after he is released.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

7. Antoine B. Lee of Winnebago, Wisconsin claims \$1,480.48 for refund of restitution money overpaid for case no. 05CF6532. Lee states that his attorney paid the ordered restitution directly to the victims on Lee's behalf. Lee alleges DOC was aware that this debt had been satisfied

because his attorney made the payments in the presence of DOC staff. In 2016, DOC switched to a new inmate account system, which began deducting restitution money for this case from Lee's account. Lee contends that the new accounting system incorrectly "rebooted" the restitution debt for this case. Lee filed an inmate complaint and was told to contact his DOC agent, who would attempt to recoup the overpayment from the victims. Lee has contacted the DOC agent multiple times but still has not been reimbursed. Lee believes that DOC is attempting to shift responsibility to others, despite the State's acknowledgement that an overpayment was made.

DOC recommends denial of this claim. DOC points to the fact that it deducted the funds from Lee's account pursuant to a valid court order and disbursed the money to the victims as instructed. DOC contends that it was unaware that Lee's attorney also sent restitution payments directly to the victims, contrary to the Judgment of Conviction. In November 2017, the court notified DOC that Lee's restitution obligations for this case were satisfied, and DOC stopped the deductions. The payments disbursed by DOC combined with the payments made by Lee's attorney resulted in an overpayment of restitution to the victims. A Division of Community Corrections agent sent a letter to the victims requesting return of the overpayment but received no response. DOC advised Lee to work with his attorney to recoup the overpaid amount. DOC believes the overpayment error was caused by Lee's attorney; therefore, DOC should not be held responsible for payment of this claim.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.

8. Kevin Burkes of Waupun, Wisconsin claims \$137.15 for value of tablet, including songs and games stored on the tablet, allegedly damaged by DOC staff. Burkes indicates he was transferred from CCI to WCI on April 26, 2022. On May 2, 2022, Burkes received his property, but his tablet was missing. DOC staff told him the tablet was designated as contraband upon receipt at WCI because the screen was damaged. Burkes filed an inmate complaint regarding the matter alleging that the tablet was undamaged prior to his transfer. His complaint was affirmed on appeal, and DOC reimbursed Burkes for the depreciated value of the tablet (\$110). Burkes disputes DOC's assertion that he has not exhausted his administrative remedies regarding the songs and games stored on his tablet. He notes that filing a complaint about the tablet includes anything on the tablet, and that listing the contents separately would have result in dismissal and/or rejection of the complaint for including multiple issues. Burkes believes that because DOC admitted that the damage occurred while the tablet was under staff control, he should receive the full purchase price of the tablet, plus the cost of the songs and games.

DOC recommends denial of this claim. DOC reimbursed Burkes \$110, the depreciated value of the tablet, consistent with DOC policy and believes no further remedy is appropriate in this matter. DOC notes that Burkes did not mention the related songs and games stored on the tablet at the time of his inmate complaint and, therefore, has not exhausted his administrative remedies with respect to those items. DOC also notes that Burkes' claim amount seems to be consistent with the full purchase price of the tablet, not accounting for the \$110 already reimbursed. Burkes alleges to have paid \$137.15 with tax for the tablet, 42 songs at \$2 each (\$84), 4 games at \$3 (\$12), and 2 games at \$1 (\$2), which totals \$235.15. \$235.15 minus \$110 (already reimbursed) = \$125.15.

The Board concludes there has been an insufficient showing of negligence on the part of the state, its officers, agents or employees and this claim is neither one for which the state is legally liable nor one which the state should assume and pay based on equitable principles.


The Board concludes:


That the following identified claims are denied:

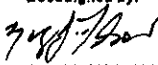
Mercy Health Systems and MercyCare Insurance Co.
Jason Edmonson
Frederick A. Morris (2 claims)

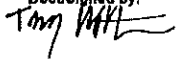
Mark A. Stephens
Antoine B. Lee
Kevin Burkes

Dated at Madison, Wisconsin this 3rd day of November, 2022

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Corey Finkelmeyer, Chair
Representative of the Attorney General

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Anne L. Hanson, Secretary
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Administration

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Mary Felzkowski
Senate Finance Committee

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Terry Katsma
Assembly Finance Committee