

STATE OF WISCONSIN CLAIMS BOARD

On October 15, 2024, the State of Wisconsin Claims Board met in the State Capitol Building and via Zoom videoconference to consider the following claims:

Hearings were conducted for the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Willie White	Dept. of Children & Families	\$6,000.00
2. Kathy Kamins & Ron Laverdure	Dept. of Transportation	\$75,466.06
3. Robert Tatum	Dept. of Corrections	\$300.00
4. Robert Tatum	Dept of Corrections	\$70.40
5. Gabriel Lugo	Innocent Convict Compensation	\$852,482.80

With respect to the claims, the Board finds:

(Decisions are unanimous unless otherwise noted.)

1. Willie White of Milwaukee, Wisconsin claims \$6,000 for monies allegedly owed for foster care services provided from July 11 to October 6, 2023. White, a previously licensed foster care provider, alleges she was contacted on July 11, 2023, by Jessica Janke, a specialist case manager for DCF, in search of care for A.B., a child with severe autism. White indicates she informed Janke that she was no longer licensed and not interested. White notes she eventually agreed to provide care if she was reimbursed pursuant to DCF's practice and procedure. White claims that at various times during the period of care, she received representations from DCF (or those ultimately acting on DCF's behalf), that she would be paid. In one instance, she alleges that Katie Peterson, the Unit Supervisor for Children's Service Society of Wisconsin, provided her a copy of DCF's Understanding the Uniform Foster Care Rate pamphlet and highlighted in yellow a \$2,000 figure, and confirmed that is what is paid for children with special needs. White notes that she had fostered special needs children in the past and was paid \$2,000 per month. White maintains that during the period of care, she provided A.B. with food, housing, clothing, daily care, and arranged for schooling and medical care. She believes she should be paid \$2,000 per month for three months, a total of \$6,000, but has not received payment from DCF.

DCF recommends this claim be denied as White was not eligible for kinship payments, not eligible for foster care payments, and did not provide necessary documentation when financial assistance was offered. DCF alleges that White was willing to accept placement of A.B. on July 11. (DCF notes that White was the guardian of A.B.'s sister and had cared for A.B. in the past.) White allegedly represented at that time that she was A.B.'s great aunt. As such, it was believed she would be eligible for kinship payments. DCF indicates that White was informed if she needed assistance beyond the kinship rate, she needed to seek a foster care license. DCF maintains that at the time of placement, they believed White was A.B.'s biological relative, and it was entered in the case management system as a relative placement. White had previously received kinship payments for care of A.B.'s sister, making it further appear in the system that she was a relative of A.B. and his sister. (DCF later learned those payments were because White was the sister's legal guardian.) White allegedly clarified at a meeting with Christina Welch on July 28 that she was A.B.'s great aunt but it was not an actual family relationship.

On September 11, Welch and Kathryn Linhart (A.B.'s case manager) met with White and determined she was *not* a biological relative of A.B. DCF alleges White was informed she was not eligible for kinship payments, and she would need to become a licensed foster care provider (within 30 days) to receive foster care payments. On September 13, White allegedly expressed that she wanted A.B. removed from her home. DCF claims that Linhart attempted contact with White on September 13, 18, and 20, but was unsuccessful. White allegedly expressed to Welch on September 15 that she wished to discontinue placement. Financial support was allegedly discussed and offered but declined. White allegedly stated she would only continue placement if she was paid \$1,500 a month but wanted payment every two weeks rather than monthly. DCF alleges it was reiterated that obtaining licensure was the only way to receive foster care

payments. DCF notes that efforts to seek alternate placement for A.B. began on September 18, but it was the understanding that White was willing to continue placement until alternate arrangements were made. Linhart allegedly spoke with White on September 21, reminding her of the requirement of licensure to receive foster care payments. That same day, Lisa Kick offered assistance in covering expenses until licensure was completed or new placement secured. Kick allegedly inquired if there were specific bills or items that could be covered, and suggested gift cards to be used for groceries or other household expenses. On September 26, Linhart offered gift cards to help with expenses, but White allegedly only wanted a check. DCF alleges that offers of assistance were reiterated to White on September 27 to include purchase of specific items for A.B. (such as shoes), and assistance toward her utility bill or mortgage. To receive reimbursement, the agency required that White provide appropriate documentation and complete a W-9 form. DCF claims that placement of A.B. with White ended on October 2, 2023, when she dropped him off at the office. As of the date of DCF's response to this claim (May 15, 2024), White had not submitted documentation of expenses or receipts. DCF notes that the amount White seeks – an exceptional foster care rate of \$2,000 per month for three months, totaling \$6,000 – is the standard foster care rate plus an additional amount for exceptional circumstances paid to licensed foster parents. DCF holds that despite efforts to assist, White failed to take required steps to receive any payment.

The Board concludes that the claim should be paid in the amount of \$6,000 based on equitable principles. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), that payment should be made from the Department of Children and Families appropriation Wis. Stat. § 20.437(1)(cw).

2. Kathy Kamins and Ron Laverdure of Somers, Wisconsin claim \$75,466.06 for property damage allegedly related to a 2020 DOT project in Kenosha County. The project involved restoration and stabilization of embankments along Lake Michigan within DOT's right of way. Part of the project involved stabilization of a slope immediately adjacent to property owned by the claimants. The claimants were in the process of building a new home on their property and expressed concerns to DOT that its contractor's work was substandard. The claimants state that they had two engineers look at the work and both engineers told them the slope would fail. The claimants allege that the contractor removed the clay soil from the site and replaced it with sand, which was contrary to the project plans and caused the revetement to wash out 8 months after completion of the project. The claimants also allege that the contractor was supposed to use granite for the armor stone but instead used limestone, which absorbed oil and contaminants, resulting in unsightly staining and odor. The claimants allege that they were forced to take immediate action in order to protect their property from erosion damage, for which they spent \$61,888.80. They also request payment of \$13,577.26 in fees to their representative in this matter.

DOT contends that its project was properly designed and constructed. DOT asserts that the use of clay was not called for in the contract plans for Revetement 1, the portion of the project adjacent to claimants' property, nor was the use of granite armor stone. The limestone selected for the project was certified by the Army Corps of Engineers and has been used in Lake Michigan shoreline protection projects for over 20 years. DOT notes that a US Coast Guard investigation found that the staining on the limestone rocks was not petroleum related as alleged by the claimants.

DOT requested a permit to regrade the slope on the claimants' property to ensure the stability of the stone revetement and slope at the property line, but claimants refused. DOT alleges that construction staff explained to the claimants that their denial of the regrade would result in a steep slope where the two properties connected. DOT notes that the embankment on the claimant's property failed in 2022, two years after completion of the project. At the claimants' request, DOT inspected the failure of their embankment and concluded that the erosion was caused by alterations the claimants made to stormwater drainage and grading around their home, as well as their installation of a concrete patio. Finally, DOT points to the fact that the embankment on DOT's property did not fail during the 2022 rain event that washed out the claimants' slope and, furthermore, has not failed to this day.

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.

3. Robert Tatum of Green Bay, Wisconsin claims \$300 for the value of a TV confiscated by staff at Green Bay Correctional Institution. On June 1, 2023, Tatum's cellmate had a medical emergency, in response to which DOC staff removed both inmates and searched the cell. Several of Tatum's property items were confiscated during the search, including his TV. Tatum claims that his TV had 1" strip of dead pixels down the center of the screen but was otherwise undamaged, and that dead pixels are considered normal wear and tear under DOC rules. He notes that his TV had previously been confiscated for the same reason but was later returned to him after staff determined it was not contraband. Tatum alleges that his next-door neighbor saw staff throw the TV during the cell search.

Tatum alleges that DOC filed a conduct report against him in retaliation for his ICRS complaint, and that DOC staff lied about his TV having additional damage in order to retroactively justify the confiscation. He further alleges that the Institution Complaint Examiner, Hearing Officer, and Warden falsified evidence and statements at the disciplinary hearing, and that DOC's Legal Counsel concealed evidence proving that staff damaged his TV.

DOC recommends denial of this claim. During the cell search, DOC staff discovered that Tatum had several contraband items including home-made tools and electronic parts. Those items were confiscated along with Tatum's broken television. Tatum relies on the fact that the TV was previously returned to him as evidence that it was not contraband, however, there is no way to know that the TV was in the same condition at the time this confiscation took place. DOC points to a photo taken by the ICE which shows that the screen frame was partially detached. DOC also found that the security seals on Tatum's TV were broken. Pursuant to DOC rules, "damaged or altered property" is considered contraband.

DOC disputes Tatum's allegation that his conduct report was in retaliation for his ICRS complaint. The conduct report was issued on June 2, 2023, but Tatum did not file his ICRS complaint until June 6, 2023. Although Tatum's neighbor testified at the disciplinary hearing that he witnessed staff throw the TV, DOC did not find his testimony to be credible. Additionally, Tatum admitted during the hearing that he intended to work on his TV, however, inmates are not allowed to alter or repair their own electronics. At the conclusion of the disciplinary hearing, Tatum's TV was declared contraband due to the missing security seals and partially detached screen and the TV was destroyed. DOC notes that the proper forum for Tatum to appeal that disciplinary action is through Circuit Court, not the Claims Board. Finally, DOC disputes Tatum's allegations that multiple DOC employees conspired to falsify or hide evidence. DOC asserts that there is no motive for conspiracy. DOC has a stock of spare TVs, and it would cost the institution nothing to replace Tatum's if it were truly warranted.

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. Robert Tatum of Green Bay, Wisconsin claims \$70.40 for the value of earbuds, a bag of food, hair conditioner, a du-rag, and pin-up pictures allegedly taken by Green Bay Correctional Institution staff during a cell search on September 20, 2023. Tatum filed an ICRS complaint regarding his property, but his complaint was denied.

Tatum believes staff took these items in retaliation for the fact that he files complaints and reports staff misconduct to government officials and the media. In support of his claim, Tatum points to a video submitted for claim 2023-025-DOC, which shows that he was wearing the du-rag and had pin-up pictures on his cell wall on June 1, 2023. Tatum asserts that his food items were legitimately obtained because he either purchased them, received them with meals, or obtained them from other inmates. Tatum dismisses as speculation DOC's statement that his property was worn out or used up prior to the search. He asserts that DOC makes it impossible for inmates to prove that staff took property because DOC does not make staff wear body cameras during cell searches or let inmates supervise the search.

DOC recommends denial of this claim. DOC notes that Tatum did not include the pinup pictures in his ICRS complaint and believes that because Tatum failed to exhaust his administrative remedies regarding those items, they should not be included in this claim.

Although Tatum has receipts showing that he once owned the allegedly missing items, he offers no proof that the items were in his cell on September 20, 2023. Tatum’s earbuds were 5 years old, and his du-rag was 4 years old. DOC asserts that these items could have been traded, lost, stolen, or simply worn out and discarded. DOC believes that the 5.5-ounce bottle of conditioner, which was purchased in October 2022, had likely been used up prior to the search. As evidence of his allegedly missing food items, Tatum provides a commissary order sheet with specific items circled. However, DOC records indicate that Tatum has made only one commissary order during his current period of incarceration and none of the allegedly missing food items were included in that order. DOC notes that if Tatum had those items in his cell at the time of the search, they would have been obtained in an illicit manner and therefore declared contraband. Finally, DOC points to Tatum’s long history of disciplinary infractions as evidence that his allegations against DOC staff are not credible.

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. Gabriel Lugo. *The Board defers its decision on Mr. Lugo’s innocent convict compensation claim until a later date in order to obtain additional information from the parties.*

The Board concludes:

That payment of the amount below to the identified claimant from the following statutory appropriation is justified under Wis. Stat. § 16.007(6)(b).

Willie White	\$6,000.00	Wis. Stat. § 20.437(1)(cw)
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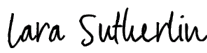
That the following identified claims are denied:

Kathy Kamins & Ron Laverdure
Robert Tatum (2 claims)

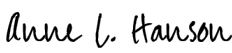
That decision of the following claim is deferred to a later date:

Gabriel Lugo

Dated at Madison, Wisconsin this 4th day of November, 2024

Signed by:



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 Lara Sutherland, Chair
 Representative of the Attorney General

Signed by:



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 Anne L. Hanson, Secretary
 Rep. of the Secretary of Administration

Signed by:


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 Eric Wimberger
 Senate Finance Committee

Signed by:


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 Alex Dallman
 Assembly Finance Committee

Signed by:


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 Mel Barnes
 Representative of the Governor