STATE OF WISCONSIN CLAIMS BOARD

On November 30, 2021, the State of Wisconsin Claims Board met via Zoom videoconference and considered the following claims:

Hearings were conducted for the following claims:

Claimant	Agency	Amount
1. Mark Knetter	Dept. of Natural Resources	$5,000.00
2. Leshaun Benjamin	Department of Corrections	$40.00

The following claims were decided without hearings:

Claimant	Agency	Amount
3. Antwan I. Slater	Department of Corrections	$30.05
4. Antwan I. Slater	Department of Corrections	$143.38
5. Shawn G. Fink	Department of Corrections	$856.87
6. Michael Hudson	Department of Corrections	$551.08

With respect to the claims, the Board finds:
(Decisions are unanimous unless otherwise noted.)

1. Mark Knetter of Wausau, Wisconsin claims $5,000 for vehicle damage caused by a tree fall at Rib Mountain State Park. On the morning of July 7, 2021, an oak tree located just inside the park fell onto Knetter's truck, which was parked on Trumpeter Lane in the Town of Rib Mountain. The tree broke off at the base where it was conjoined with another oak. Knetter submitted photos showing that the inside of the tree was rotten and that the morning was calm with no winds. Staff at Rib Mountain State Park and told Knetter that it is their practice to check the trees near playgrounds, campgrounds, picnic areas, and buildings but no other areas, such as the entry point near Trumpeter Lane. Knetter notes that many hunters and hikers access the park through the Trumpeter Lane entrance. He believes DNR is obligated to inspect for unstable or decaying trees at entrance points to state parks in order to ensure public safety. He requests reimbursement for the value of his truck, which was "totaled" in this incident.

The Department of Natural Resources recommends denial of this claim. DNR states that it is long settled law in Wisconsin that in order to find a property owner liable for damage caused by a tree fall, it must be shown that the property owner either caused the tree to fall, or that they knew or should have known the tree was a hazard. Neither is the case in this incident. DNR notes that if Knetter's vehicle had been inside the park, the recreational immunity statute would preclude state liability. DNR performs regular tree maintenance on thousands of trees each year, but it is not possible to inspect each of the millions of trees in Wisconsin's state parks. DNR points to Knetter's own photos, which show that the tree had a full crown of leaves and no outward signs of decay. DNR notes that tree inspections do not include an evaluation of the interior of trees, therefore, even if this tree had been inspected, it would not have been flagged for removal based on its outward appearance. DNR states that it had no notice that this tree posed a hazard and believes Knetter has provided no evidence of negligence on the part of the state.

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.

2. Leshaun Benjamin of Waupun, Wisconsin claims $40 for charges made to his phone account at Waupun Correctional Institution (WCI). Benjamin was placed in restricted housing on August 4, 2020. He states that he was able to make a phone call that week but was unable to do so the following week because the system rejected his pin number as invalid. On August 11, Benjamin received a copy of a form saying he had requested a reset of his pin number, a request he denies making. He notes that the handwriting on the form is not his and he believes the document was forged. Over the course of two weeks, other inmates used his pin number to charge phone calls to his account. Benjamin alleges that a WCI sergeant told him this has been an ongoing problem for inmates placed in restricted housing at WCI. Benjamin filed an inmate complaint, but DOC staff said they could not identify the inmates who had used his phone account and therefore, he could not be reimbursed for the charges. Benjamin alleges that DOC could have identified the inmates because there have been cameras surveilling the phones since May 2020, several months prior to this incident. Benjamin states that he never gave his pin number to another inmate or otherwise authorized these phone calls. He believes WCI staff members allowed other inmates to steal his pin number in retaliation for prior complaints he has filed against the institution.

The Department of Corrections recommends denial of this claim. Inmates use a pin number to transfer money from their accounts and make phone calls. Inmates select their own pin numbers and are responsible for keeping them secure. DOC states that the written request to change Benjamin's pin number was issued by WCI staff after he reported the unauthorized use of his account. When a new pin number is requested, a staff member gives a temporary pin directly to the inmate, who then changes it to a new number. DOC notes that Benjamin has provided no evidence to support his allegation that WCI staff gave his pin number to other inmates. Although DOC's investigation confirmed that multiple inmates used Benjamin's phone account while he was in restricted housing, DOC was not able to identify those inmates because there were no cameras monitoring the phones at the time the calls were made. If DOC had been able to identify the inmates, those individuals would have received conduct reports and been made to reimburse Benjamin for the charges. DOC believes the unauthorized calls were likely caused by Benjamin's failure to secure his pin number.

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. Antwan I. Slater of Oneida, Wisconsin claims $30.05 for additional overtime wages allegedly owed by DOC. Slater worked at the Waupun Dairy from December 6, 2020 to February 18, 2021. Slater states that he only received $0.02 per hour for overtime, even though Wis. Admin. Code DOC 313.12(3) requires an overtime rate of 1.5 times an inmate's base wage for hours worked in excess of 40 hours per week. Slater notes that DOC is required to follow its own rules. He states that he attempted to file an inmate complaint regarding his overtime rate on February 25, 2021, but DOC rejected that complaint on the basis that his overtime claim was being addressed in an earlier complaint, which turned out to be false. Slater believes that DOC intentionally thwarted his attempt to exhaust his administrative remedies and therefore should not be allowed to argue that he failed to do so.

The Department of Corrections recommends denial of this claim. DOC states that Slater failed to properly navigate the inmate complaint process (ICRS) and therefore, did not properly exhaust his administrative remedies before filing this claim. Slater's ICRS complaint regarding his overtime wages was filed one week after he filed this claim with the Claims Board. DOC argues that Slater's ICRS complaint was well beyond the 14-day limit—more than two and a half months after the occurrence of that gave rise to his complaint—and was therefore untimely. DOC also believes Slater is not entitled to back pay for overtime wages because he not a state employee. DOC points to the primary the purpose of prison industries, which is inmate rehabilitation and reintegration, not compensation. Finally, DOC believes Slater's claimed damage amount is incorrect because his calculations are based on allegations that he was also owed a higher base wage. Slater later withdrew the portion of his claim related to his base wage rate.

The Board concludes the claim should be paid in the amount of $35.19 based on equitable principles and a review of submitted paystubs. The Board further concludes, under authority of Wis. Stat. § 16.007(6m), payment should be made from the Department of Corrections appropriation Wis. Stat. § 20.410(1)(kf), Stats.

4. **Antwan I. Slater** of Oneida, Wisconsin claims $143.38 for refund of money deducted from his inmate wages, allegedly in violation of a court order. Slater was convicted of a crime in 2004 and his judgment of conviction (JOC) states that 25% of his wages are to be deducted for restitution. Slater believes that this language means that DOC can take no more than 25% of his wages for restitution. However, in 2016, DOC began deducting 50% of his wages for restitution. Slater believes that DOC is using 2015 Wis. Act 355 to justify the additional deduction. However, he points to the fact that Act 355 took effect years after his conviction and is therefore not applicable to his case. Slater does not dispute that he owes restitution, but he does not believe DOC has the authority increase the restitution rate of "up to 25%" that was ordered by the court.

The Department of Corrections recommends denial of this claim. DOC denies Slater's allegation that the department is incorrectly applying Act 355 to his deductions. In 2016, DOC increased the rate of restitution deductions from inmates' funds from 25% to 50%. DOC notes that the Wisconsin Court of Appeals found that the department's authority to deduct funds for restitution payments existed prior to the passage of Act 355. The court noted that Act 355 simply "codified the common law by specifically authorizing the department to take restitution from an inmate's account at 'an amount of a percentage the department determines is reasonable for payment to victims.'" DOC points to the fact that Slater's JOC does not say "up to 25%" as he alleges. It states, "25% of prison wages to be applied to restitution and court costs." DOC is not ignoring the JOC—the department is deducting 25% as ordered. DOC is choosing to exercise its broad authority over inmate accounts to deduct an additional amount for victim restitution, resulting in a total deduction of 50%. DOC believes that because Slater has not lost the benefit of these funds, which have been applied to his outstanding legal obligations, reimbursement by the board is not appropriate.

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. **Shawn G. Fink** of Redgranite, Wisconsin claims $856.87 for refund of child support and restitution payments which DOC deducted from his third Economic Impact Payment (EIP3) authorized by the American Rescue Plan Act of 2021 (ARPA). Fink alleges the deductions violate federal law as well as his due process and equal protection rights. He points to the fact that the law authorizing the second Economic Impact Payments, the Consolidated Appropriations Act of 2021 (CCA), prohibited deductions from those payments. Fink believes this clearly indicates that it was congress' intent that every American receive the full benefit of all COVID-19 stimulus payments without any deductions. He believes congress did not feel it necessary to repeat the same language prohibiting deductions in ARPA because CCA was still in place and had not been repealed. Fink notes that statutes must be read in a manner that harmonizes them and that federal has supremacy over state law when there is a conflict between them.

The Department of Corrections believes there is no legal or equitable reason to pay this claim. DOC agrees that it could not (and did not) take deductions from the second round of stimulus payments because CCA contained a broad definition of the term "deduction" which prevented DOC from doing so. By contrast, the language in ARPA only prohibited specific types of deductions related to taxes and unemployment compensation debts. ARPA did not prohibit deductions for child support and victim restitution. DOC believes that the difference in language between CCA and ARPA clearly illustrates congress' intent to allow deductions from the third round of payments that had been prohibited in the second round. DOC notes that when child support and victim restitution deductions are allowed under federal law, the department is required by Wis. Stat. § 973.20(11)(c) to make those deductions. DOC does not dispute that federal law has supremacy over state law when there is a conflict, however there is

no conflict between ARPA and state law. ARPA allowed the deductions, DOC was required by state law to make the deductions, and the money was used to pay Fink's lawful debts, which is to his benefit.

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. Michael Hudson of Redgranite, Wisconsin claims $551.08 for refund of child support and release account payments which DOC deducted from his third Economic Impact Payment (EIP3) authorized by the American Rescue Plan Act of 2021 (ARPA). Hudson alleges the deductions violate federal law as well as his due process and equal protection rights. He points to the fact that the law authorizing the second Economic Impact Payments, the Consolidated Appropriations Act of 2021 (CCA), prohibited deductions from those payments. Hudson believes this clearly indicates that it was congress' intent that every American receive the full benefit of all COVID-19 stimulus payments without any deductions. He believes congress did not feel it necessary to repeat the same language prohibiting deductions in the ARPA because the CCA was still in place and had not been repealed. Hudson notes that that federal has supremacy over state law when there is a conflict between them. Hudson points to *Kellar v. Inch*, in which a judge in Florida stated that "the rules regarding protections of EIP3 are governed by the ARP, which provides protection against only reduction or offset of past-due Federal taxes, unpaid child support, debts owed to Federal agencies, past-due State income tax obligations, and unemployment compensation debts."

The Department of Corrections believes there is no legal or equitable reason to pay this claim. DOC agrees that it could not (and did not) take deductions from the second round of stimulus payments because CCA contained a broad definition of the term "deduction" which prevented DOC from doing so. By contrast, the language in ARPA only prohibited specific types of deductions related to taxes and unemployment compensation debts. ARPA did not prohibit deductions for child support and release accounts. DOC believes that the difference in language between the CCA and the ARPA clearly illustrates congress' intent to allow deductions from the third round of payments that had been prohibited in the second round. DOC notes that when child support deductions are allowed under federal law, the department is required by Wis. Stat. § 973.20(11)(c) to make those deductions. A deduction taken for an inmate release account is simply a transfer of money, which is then held in the inmate's name for their use upon release. Wis. Admin. Code DOC 309.466 requires that DOC make release account deductions from monies earned or received by inmates. DOC does not dispute that federal law has supremacy over state law when there is a conflict, however there is no conflict between ARPA and state law. ARPA allowed the deductions and DOC was required by state law to make them. DOC notes that payment of Hudson's child support is to his benefit, and the money in his inmate release account will be available to him upon his release from prison.

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

Antwan I. Slater	$35.19	Wis. Stat. § 20.410(1)(kf)

That the following identified claims are denied:

Mark Knetter
Leshaun Benjamin
Antwan I. Slater ($143.38)
Shawn G. Fink
Michael Hudson

Dated at Madison, Wisconsin December 15, 2021

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