

09hr_JCR-AR_Misc_pt58



Details: Complaints.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

Brandon:

The plaintiff in this case is complaining that the department of corrections prevented him from receiving a federal stimulus refund check and that the department took this action based on a policy that was not properly promulgated as an administrative rule and that is without statutory authority.

Section 227.40, Stats., requires when a request is made for a declaratory judgment involving administrative rules, a copy of the complaint must be served on JCRAR. This service must be shown in order for the plaintiff to present his or her case; a failure to make the service can result in a dismissal of the proceeding. JCRAR, with the approval of JCLO, may become a party in the action if it has an interest in the issue presented.

Although JCRAR is not required to take any action, copies of complaints such as these should be retained so that proof of service can be shown if a plaintiff's right to continue an action is challenged upon the allegation that JCRAR never received a copy of the complaint.

So, just throw something like this in a pile or an appropriate file drawer. You also may send an email to committee members notifying them that JCRAR has been served with a copy of complaint that makes the claim described above and that, if a member is interested, a copy of the complaint will be provided.

Ron

SHELLEY J. GAYLORD
CIRCUIT COURT, BR. 6

STATE OF WISCONSIN CIRCUIT COURT APR 15 2000 DANE COUNTY

HARLAN RICHARDS
Oakhill Correctional Institution
P.O. Box 938
Oregon, WI 53575,

Plaintiff,

-v-

Case No. 09CV2165

JOHN BETT, ADMINISTRATOR,
DIVISION OF ADULT INSTITUTIONS,
and

RICK RAEMISCH, SECRETARY,
DEPARTMENT OF CORRECTIONS,
3099 E. Washington Ave.
Madison, WI 53707,
and

SHEILA RETANA, FINANCIAL SPECIALIST,
OAKHILL CORRECTIONAL INSTITUTION,
P.O. Box 938
Oregon, WI 53575,

Defendants.

DECLARATORY JUDGMENT 30701
INTENTIONAL TORT 30106

IS A TRUE COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CIRCUIT COURT.

CARLO ESQUERA
CLERK OF CIRCUIT COURT

SUMMONS (COMPLAINT ATTACHED)

THE STATE OF WISCONSIN TO:

JOHN BETT
RICK RAEMISCH
SHEILA RETANA

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.


Within forty-five (45) days of receiving this summons you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court whose address is 215 S. Hamilton St., Madison, WI 53703, and to Harlan Richards whose address is P.O. Box 938 Oregon, WI 53575. You may have an attorney help or represent you.

SERVED BY ADRIAN LOMAX

5-20-09

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure or property.

Dated this 30th day of January, 2009



Harlan Richards
P.O. Box 938
Oregon, WI 53575

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

HARLAN RICHARDS
Oakhill Correctional Institution
P.O. Box 938
Oregon, WI 53575,

Plaintiff,

-v-

JOHN BETT, ADMINISTRATOR,
DIVISION OF ADULT INSTITUTIONS,
and
RICK RAEMISCH, SECRETARY,
DEPARTMENT OF CORRECTIONS,
3099 E. Washington Ave.
Madison, WI 53707,
and
SHEILA RETANA, FINANCIAL SPECIALIST,
OAKHILL CORRECTIONAL INSTITUTION,
P.O. BOX 938
Oregon, WI 53575,

Defendants.

Case No. 09CV2165

DECLARATORY JUDGMENT 30701
INTENTIONAL TORT 30106

THIS IS AN APPROXIMATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

CARLO ESQUEDA
CLERK OF CIRCUIT COURT

COMPLAINT

Nature of the Action

1. This is an action for declaratory judgment pursuant to sec. 227.40, Wis. Stats., and a state tort action against state officials for application of unpromulgated rules in excess of statutory authority which have caused plaintiff Richards financial harm:

Parties to the Action

2. Plaintiff Harlan Richards is a prisoner currently housed in Oakhill Correctional Institution who has been subjected to DAI Policy 300.00.02.

3. Defendant John Bett is the administrator of the Division of Adult Institutions (DAI) of the Department of Corrections (DOC), who implemented and issued DAI Policy 300.00.02 without first promulgating the policy as a rule under chapter 227, stats.

4. Defendant Rick Raemisch is the secretary of the DOC and as such is the proper defendant in declaratory judgment actions filed under sec. 227.40, stats.

5. Defendant Sheila Retana is a financial specialist at Oakhill Correctional Institution (OCI) who personally applied DAI Policy 300.00.02 to Richards which caused his financial loss.

Facts

6. In 2007, Richards was housed at Gordon Correctional Center (GCC) where he participated in the work release program from January to October 2007 as a contract employee for United Employment Inc. with physical placement at Jack Links Beef Jerky factory in Minong, Wisconsin.

7. In 2008, Richards filed income tax returns based on his employment during 2007 and received state and federal tax refunds while housed at Sangar Powers Correctional Center (SPCC).

8. In 2008, Congress enacted 110 P.L. 185 creating 26 USCS 6428 which: "allowed as a credit against the tax imposed by Subtitle A for the first taxable year beginning in 2008 an amount equal to the lesser of . . . net income tax liability, or, . . . \$600 . . .".

9. Richards met the definition of an eligible individual under 26 USCS 6428(e)(3) and was therefore entitled to the \$600 stimulus payment from the Internal Revenue Service (IRS).

10. On July 14, 2008, defendant Sheila Retana issued a memo to Richards stating that his "federal income tax refund check, in the amount of \$599.90, has been returned to the IRS, pursuant to instructions from the Milwaukee Criminal Investigation Unit" (exhibit A-3 attached).

11. This action was based on DAI Policy 300.00.02, issued by Defendant Bett, effective 4/4/08.

12. DAI Policy 300.00.02 meets the definition of a rule under sec. 227.01(13), stats., but was never promulgated under chapter 227, stats., and there is no statutory authority which would authorize restricting Richards federal income tax return.

13. DOC 309.46, Wis. Adm. Code, states that "[a]ll money in any form delivered to an institution for the benefit of an inmate shall be delivered to the institution business manager. The institution business manager shall credit the appropriate account in the name of the inmate in accordance with these sections and ch. DOC 324."

14. Richards filed Inmate Complaint Review System (ICRS) grievance #OCI-2008-19651 objecting to the rejection of his federal tax refund check. His grievance was dismissed at all levels (exhibit A attached).

15. Richards filed his notice of claim on this issue by sending it by certified mail to the Attorney General's Office on September 6, 2008 (exhibit B attached).

16. Richards attempted to contact the IRS to obtain his refund check and requested permission to call the IRS pursuant to DOC 309.39(1), Wis. Adm. Code, which states in pertinent part: "Inmate telephone calls. (1) The department shall encourage communication between an inmate and an inmate's family, friends, government officials, courts . . ."

17. Richards' request was denied and he filed ICRS grievance #OCI-2008-27337 objecting to the denial which was dismissed at all levels (exhibit C attached).

18. 26 USCS 6428(g)(3) states in part: "No refund or credit shall be made or allowed under this subsection after December 31, 2008."

19. Richards did not receive his tax refund by Dec. 31, 2008 and has now lost it as a direct result of defendant Retana returning his check in July 2008.

20. Defendant Bett had a ministerial duty under chapter 227, stats., to promulgate DAI Policy 300.00.02 as a rule before issuing it as a mandatory policy.

21. Defendant Retana had a ministerial duty under DOC 309.46 to accept Richards' tax refund check and deposit it into Richards' account and further had no authority to subject Richards to DAI Policy 300.00.02, which is an unpromulgated rule without any statutory authority.

Statement of Claim

22. There is no statute which would authorize the promulgation of DAI Policy 300.00.02 as a DOC rule which could be applied to Richards.

23. As a direct result of defendant Bett issuing DAI Policy 300.00.02 without promulgating it and without statutory authority to do so, and defendant Retana's application of that policy to Richards, Richards lost his federal tax refund stimulus check.

24. DOC 309.39(1), Wis. Adm. Code, creates a mandatory duty to permit Richards to call the IRS to obtain reissuance of his federal tax refund stimulus check.

25. As a direct result of the failure to permit Richards to call the IRS, Richards was unable to make arrangements with the IRS to obtain his federal tax refund stimulus check.

26. The conduct of defendants Bett and Retana was willful, malicious and intentional as they knew or reasonably should have known that DAI Policy 300.00.02 could not be applied against Richards without proper promulgation and requisite statutory authority.

Relief Requested

27. A declaratory judgment that DAI Policy 300.00.02 is a rule under chapter 227, stats., which is required to be promulgated prior to its application to Richards.

28. A declaratory judgment that there is no statutory authority to promulgate DAI Policy 300.00.02, restricting Richards' right to obtain his federal tax refund check.

29. A declaratory judgment that DOC 309.39(1) creates a duty to permit Richards to contact by phone any government official whenever he has a legitimate reason for doing so.

30. A declaratory judgment that defendants Bett and Retana caused Richards to lose his federal tax refund stimulus check by applying DAI Policy 300.00.02 to him.

31. A money judgment in the amount of \$599.90 for the loss of Richards' federal tax refund stimulus check.


32. All costs incurred in this action.

33. An injunction barring defendant from applying DAI Policy 300.00.02 to Richards and an order permitting Richards to make phone calls pursuant to DOC 309.39(1).

34. Any other relief the court deems proper.

Dated this 30th day of January, 2009.

Respectfully submitted,



Harlan Richards
P.O. Box 938
Oregon, WI 53575

OFFENDER COMPLAINT

INSTRUCTIONS: SEE REVERSE SIDE

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Harlan Richards		37975
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
OCI	C-1	106
DATE OF INCIDENT OR DENIAL OF REQUEST		
July 14, 2008		
STATE YOUR COMPLAINT		

TO BE FILLED IN BY ICE ONLY
DOC COMPLAINT FILE NUMBER
DATE COMPLAINT RECEIVED
CODE NUMBER

Today I received notice that my tax refund check "has been returned to the IRS, pursuant to instructions from the Milwaukee Criminal Investigation Unit."

The notice goes on to say: "Pursuant to DAI 300.00.02, all US Treasury checks received at an institution over the amount of \$300, must be called into the Criminal Investigation Unit in Milwaukee. The authenticity of the tax refund check will be determined and the institution advised whether or not the refund check should be given to the inmate."

A lawfully issued check for \$599.90 was sent to me by the IRS. No where in the notice does it state that the check was found to be improperly sent to me or otherwise not authentic. If I have violated a DOC rule, write me a conduct report. If I have violated a statute, refer me for prosecution. DOC 309.46 states "All money in any form delivered to an institution for the benefit of an inmate shall be delivered to the institution business manager. The institution business manager shall credit the appropriate account in the name of the inmate in accordance with these sections and ch. DOC 224."

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

SIGNATURE OF OFFENDER OR SPOKESPERSON: *Harlan Richards*
DATE SIGNED: 7/16/2008

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

Exhibit A-1

OFFENDER COMPLAINT

INSTRUCTIONS: SEE REVERSE SIDE

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Harlan Richards		37975
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
UCI	C-1	106
DATE OF INCIDENT OR DENIAL OF REQUEST		
July 14, 2008		

TO BE FILLED IN BY ICE ONLY
DOC COMPLAINT FILE NUMBER
DATE COMPLAINT RECEIVED
CODE NUMBER

STATE YOUR COMPLAINT

DOC 309.46 is a properly promulgated rule. State ex rel Staples v Dept. of Health & Social Ser., 115 Wis. 2d 363, 340 N.W. 2d 194, 196 (Wis. 1983), states: "Administrative rules enacted pursuant to statutory rulemaking authority have the force and effect of law in Wisconsin." Depositing that check into my account was a mandatory duty which should have been performed. Further, DAI 300.00.02 meets the definition of a rule under sec. 227.01(13), Wis. Stats., and therefore must be properly promulgated under Ch. 227, Wis. Stats., in order to be enforceable.

Finally, had anybody actually investigated whether I was lawfully entitled to receive a check from the IRS they would have found that I was employed in 2007, that I had filed tax returns for 2007 and that I had already lawfully received state and federal refund while at Sangar Powers Correctional Center. They further would have found that I was lawfully entitled to the \$599.90 check.

Shelia Retana owes me \$599.90 and I want that amount placed in my account. Whether you contact the IRS and have my check returned to Oakhill or pay it out of the DOC budget doesn't matter to me as long as I am reimbursed for the unlawful taking of my money.

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

SIGNATURE OF OFFENDER OR SPOKESPERSON

DATE SIGNED

July 16, 2008

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

Exhibit A-2

OAKHILL CORRECTIONAL INSTITUTION
CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: July 14, 2008

FILE REF:

TO: Harlan Richards #37975
Cottage 1

FROM: S. Retana, Financial Specialist
Inmate Accounts

SUBJECT: ***Federal Income Tax Refund Check***

This correspondence is to notify you that the your federal income tax refund check, in the amount of \$599.90, has been returned to the IRS, pursuant to instructions from the Milwaukee Criminal Investigation Unit.

Pursuant to DAI 300.00.02, all US Treasury checks received at an institution, over the amount of \$300, must be called into the Criminal Investigation Unit in Milwaukee. The authenticity of the tax refund check will be determined and the institution advised whether or not the refund check should be given to the inmate. Please note that the Business Office is never given the reason for this determination.

If you wish to contact the Internal Revenue Service, please use the following name and address:

Attn: Helen Brown
INTERNAL REVENUE SERVICE
P.O. BOX 24551 Stop 9000S-2
Kansas City, MO 64131-0551

Exhibit A-3

ICE RECEIPT
COMPLAINT NUMBER OCI-2008-19651
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
Oakhill Correctional Institution
Oregon, WI 53575-0938

Complaint Information:

Date Acknowledged: July 17, 2008

Subject of Complaint: 17 - Inmate Accounts

Brief Summary: Complains of Federal Stimulus check being returned to IRS

This is to acknowledge the complaint you filed and which was received on the date indicated. Depending on the nature of the complaint, you may or may not be interviewed by the ICE. A recommendation on the complaint will be made and submitted to the appropriate reviewing authority within 20 working days of acknowledgement. A decision will be made by the appropriate reviewing authority within 10 working days following receipt of the recommendation unless extended for cause.

Please write to the ICE if this issue is resolved before you receive an answer.


Exhibit A-4

ICE REPORT
COMPLAINT NUMBER OCI-2008-19651
*** ICRS CONFIDENTIAL ***

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
Oakhill Correctional Institution
Oregon, WI 53575-0938

Complaint Information:

Date Complaint Received:	July 17, 2008	Inmate Contacted?	No
Subject of Complaint:	17 - Inmate Accounts		
Person(s) Contacted:	Ms. Retana		
Document(s) Relied Upon:	DAI 300.00.02 Inmate Taxes		
Brief Summary:	Complains of Federal Stimulus check being returned to IRS		
Summary of Facts:	<p>Inmate complains that on 7/14/08 he received notice that his tax refund check (stimulus check) had been returned to the IRS pursuant to instructions from the Milwaukee Criminal Investigation unit. Says depositing that check into his account was mandatory and wants the money put into his account.</p> <p>ICE spoke with Ms. Retana and she stated that in March of 2008 all financial program supervisors were advised by DAI to follow the guidelines of DAI 300.00.02 in regards to inmates who receive Federal Stimulus checks. Ms. Retana followed this policy and when Mr. Richards received his check, the IRS ordered its return.</p> <p>Ms. Retana followed DAI 300.00.02 and the directive from the IRS. Mr. Richards may contact the IRS directly in regards to the status of his check and whether or not he will be receiving it from them or not.</p> <p>ICE dismisses complaint.</p>		
ICE Recommendation:	Dismissed		
Recommendation Date:	July 30, 2008		



Debra Lance

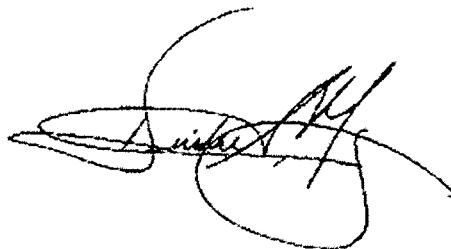
Exhibit A-5

REVIEWER'S DECISION
COMPLAINT NUMBER OCI-2008-19651
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
Oakhill Correctional Institution
Oregon, WI 53575-0938

Complaint Information:

Date Complaint Received:	July 17, 2008
Subject of Complaint:	17 - Inmate Accounts
Brief Summary:	Complains of Federal Stimulus check being returned to IRS
ICE's Recommendation:	Dismissed
Reviewer's Decision:	Dismissed
Decision Date:	August 16, 2008



Deirdre Morgan

CC:

Distributed via email
Retana, Sheila

A complainant dissatisfied with a decision may, within 10 calendar days after the date of the decision, appeal that decision by filing a written request for review with the Corrections Complaint Examiner on form DOC-405 (DOC 310.13, Wis. Adm. Code).

Exhibit A-6

REQUEST FOR CORRECTIONS COMPLAINT EXAMINER REVIEW

INSTRUCTIONS:

1. Rejected complaints can only be appealed to the appropriate Reviewing Authority. That decision is final.
2. Prepare an original and one copy of this request. Please print or type.
3. Keep the copy of this request for your records and send the original, in a sealed envelope, to:

CORRECTIONS COMPLAINT EXAMINER
DEPARTMENT OF CORRECTIONS
PO BOX 7925
MADISON, WI 53707-7925

PART I - MUST BE COMPLETED

OFFENDER NAME	DOC NUMBER	INSTITUTION (Abbreviate)	COMPLAINT FILE NUMBER
Harlan Richards	37975	OCI	2008-19651

STATE BRIEFLY WHY YOU ARE NOT SATISFIED WITH THE ACTION OF THE APPROPRIATE REVIEWING AUTHORITY

The first problem with the decision is that it does not address the use of an unpromulgated rule to deprive me of \$599.90 contrary to the mandatory duty of DOC 309.46 to deposit the check into my account. That will be the basis of my state tort action to recover the money from Shelia Retana and John Bett - the person who implemented the rule and the person who followed **his** directive.

The ICE claims that the IRS ordered the return of my check. That is not true. The Milwaukee Criminal Investigation Unit ordered the return of my check. That is a state organization, not the IRS. Had anyone contacted the IRS they would have been told that it was a lawfully issued check.

Ms. Retana, John Bett, Debra Lance, the CCE and I have one thing in common: we all paid federal taxes in 2007 and were all lawfully entitled to the stimulus check from the government. The only person who didn't get the check he was entitled to was me. The reason for that was because John Bett and Ms. Retana overstepped their authority and took it upon themselves to deprive me of what was lawfully mine.

It doesn't matter if I do contact the IRS as Ms. Lance suggests because when it arrives a second time, Ms. Retana will call the Milwaukee Criminal Investigation Unit - a state organization - who will again tell her to return my check. As long as DAE 300.00.02 is applied I will never be able to get my check.

I will repeat what I said in my original grievance: If I broke an administrative rule, write me a conduct report, if I broke a law, prosecute me. You have no authority to interfere with my **lawful interactions** with the IRS. Further, I am entitled to confidentiality regarding my tax returns. It is none of your business what goes on between me and the IRS.

I expect to be reimbursed \$599.90 to compensate for the money you prevented me from receiving.

(CONTINUE ON REVERSE SIDE)

Exhibit A-7

PART 2 – IDENTIFY AND LIST ALL FORMS OF PROOF YOU HAVE OR ARE AWARE OF THAT SUPPORTS YOUR COMPLAINT.

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT	WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT	WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

OTHER (Receipts, property sheets, disciplinary paper work, PRC summaries, etc.)

My inmate account will show that I paid federal taxes to the IRS while I was at OCI.

PART 3 – MUST BE COMPLETED

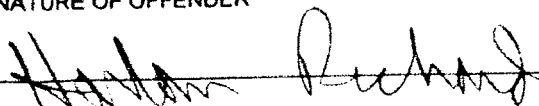
SIGNATURE OF OFFENDER	DATE SIGNED
	Aug 21, 2016

Exhibit A-8

CCE RECEIPT
COMPLAINT NUMBER OCI-2008-19651
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Date Appeal Acknowledged	August 25, 2008
Subject of Complaint:	17 - Inmate Accounts
Brief Summary:	Complains of Federal Stimulus check being returned to IRS

Your request for review has been received.

The Corrections Complaint Examiner (CCE) has 35 working days to submit a recommendation to the Office of the Secretary (OOS) for Review. The OOS has 10 working days to make a decision after receiving the CCE's report. The OOS may extend the time for making a decision for cause and upon notice to all interested parties.

If you do not receive a decision or other notices within that time, you may write directly to:

Secretary of the Department of Corrections
Post Office Box 7925
Madison, WI 53707-7925

Exhibit A-9

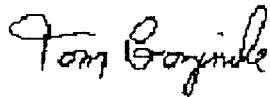
CCE REPORT
COMPLAINT NUMBER OCI-2008-19651
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Subject of Complaint:	17 - Inmate Accounts		
Brief Summary:	Complains of Federal Stimulus check being returned to IRS		
Method of Disposition:	Review on Record? <input checked="" type="checkbox"/> Yes	Investigation? <input type="checkbox"/>	Yes <input type="checkbox"/>
Documents Relied Upon:	DAI Policy 300.00.02		
CCE's Recommendation:	Dismissed		
	The institution's decision reasonably and appropriately addressed the issue raised by this inmate. Contrary to what inmate Richards states, the Milwaukee Criminal Investigation Unit is part of the Federal Internal Revenue Service and operates a Questionable Refund Program; since they are the originators of refund checks, they have the right to verify the authenticity of the underlying claim. This program has been in effect for many years. The CCE also notes that, on appeal, the inmate presents no new information that would warrant recommending overturning the original decision. Thus, it is recommended this appeal be dismissed.		

Recommendation Date: September 04, 2008



Tom Gozinske

Exhibit A-10

OOS REPORT
COMPLAINT NUMBER OCI-2008-19651
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Subject of Complaint:	17 - Inmate Accounts
Brief Summary:	Complains of Federal Stimulus check being returned to IRS
OOS Decision:	Dismissed
Decision Comments:	The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of September 4, 2008 in the above case: The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.
Decision Date:	September 04, 2008



Amy Smith

Exhibit A-11



STATE OF WISCONSIN
NOTICE OF INJURY AND CLAIM

Pursuant to Wis. Stat. Section 893.82

This notice must be served upon the Attorney General by certified mail within 120 days (180 days for medical malpractice claims) of the event giving rise to the claim for such injury, damage or death at 114 East, State Capitol, Post Office Box 7857, Madison, Wisconsin 53707-7857.

Claimant's Name Harlan Richards	
Address P.O. Box 938 Oregon, WI 53575	Phone
Time and Date of Occurrence July 14, 2008	Location Oakhill Correctional Institution
Statement of Circumstances Giving Rise to the Claim for Such Injury, Damage or Death and Names of Persons Involved, Including Name(s) of State Officer(s), Agent(s) or Employee(s). <p>I worked at a regular job in 2007 and paid income taxes for 2007. Under federal law, I am entitled to a \$600 stimulus payment. A check made out to me for \$599.90 arrived at Oakhill Correctional Institution (OCI) and was returned to the IRS based on DAI Policy 300.00.02. Shelia Retana had a ministerial duty under DOC 309.46 to deposit the check into my account and refused to do so. In spite of repeated attempts to have the IRS send my check to another address, I have been unable to obtain my stimulus check as a result of Ms. Retana sending my check back to the IRS. DAI Policy 300.00.02 was never promulgated under chapter 227 as a rule even though it meets the definition of a rule under sec. 227.01(13), stats.</p> <p>I will be filing a state tort action against John Bett and Shelia Retana for the implementation and application of an un-promulgated rule against me which caused me to be deprived of my federal stimulus check.</p>	
(If additional space is needed, continue on backside of this notice form.)	

I certify that the above-described injury, damage or death actually occurred, that I have read the above foregoing notice of injury and claim, and that the same is true to my own knowledge except as to those matters stated upon information and belief and as to those matters, I believe the same to be true.

Date: Sept 3, 2008

Harlan Richards
Signature of Claimant

Subscribed and sworn to before me

this 3rd day of September 2008

Barbara J. Stanford
Notary Public, State of Wisconsin

My Commission: 5-29-11

Exhibit B-1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>R. DENNIS</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p><i>Attorney General's Office P.O. Box 7857 Madison, Wis. 53707</i></p>	<p>B. Received by (Printed Name) <i>William R. DENNIS</i> C. Date of Delivery 8 2003</p>
<p>2. Article Number (Transfer from service) 7007 0710 0002 9385 1428</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7007 0710 0002 9385 1428

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL MAIL

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PS Form 3800, August 2006 See Reverse for Instructions

Exhibit B-2

OFFENDER COMPLAINT

INSTRUCTIONS: SEE REVERSE SIDE

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Harlan Richards		37975
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
OCI	C-1	106

TO BE FILLED IN BY ICE ONLY	
DOC COMPLAINT FILE NUMBER	
DATE COMPLAINT RECEIVED	
CODE NUMBER	

DATE OF INCIDENT OR DENIAL OF REQUEST
Ongoing

STATE YOUR COMPLAINT

DOC 309.39(1) states in pertinent part:

"Inmate telephone calls. (1) The department shall encourage communication between an inmate and an inmate's family, friends, government officials, courts . . . " (emphasis added)

On Sept. 17, 2008, I wrote to my social worker (Jaeggi) and asked him to set up a phone call for me so I could call the IRS using a toll-free number. He refused, stating:

"Unfortunately, I am not able to facilitate phone calls unless they are emergency in nature" (see attached).

I then wrote to Chris Tanner on Sept. 21, 2008, explaining the situation and asking her what procedure I needed to follow to make a phone call to the IRS (see attached). She did not respond but I saw her walking on the road and asked her about it. She said that she thought Deb Lance had taken care of it. I said she had not. I wrote Ms. Tanner a follow-up letter on Sept. 30, 2008, asking her to authorize my phone call to the IRS (see attached). She did not respond.

Sheila Retana unlawfully returned my tax refund stimulus check to the IRS. I have written the IRS 3 letters and have not gotten a response. The notices I got from the IRS regarding my refund states: "For assistance, you may call: 1-866-234-2942"

Deb Lance, in dismissing grievance OCI-2008-19651, stated:

"Mr. Richards may contact the IRS directly in regards to the status of his check . . ."

The administrative code authorizes me to call government officials. Deb Lance told me to contact the IRS directly. The inmate phone system will not permit toll-free numbers. My only option is to use
(cont. on next page)

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

attached are copies of my request to Jaeggi and letters to Ms. Tanner.

SIGNATURE OF OFFENDER OR SPOKESPERSON

DATE SIGNED

1 Oct 10, 2008

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

Exhibit C-1

OFFENDER COMPLAINT

INSTRUCTIONS: SEE REVERSE SIDE

OFFENDER NAME (If group complaint, enter name of spokesperson)		DOC NUMBER
Harlan Richards		37975
INSTITUTION NAME	OFFENDER HOUSING UNIT	CELL OR ROOM NUMBER
OCI	C-1	106
DATE OF INCIDENT OR DENIAL OF REQUEST		
Ongoing		

TO BE FILLED IN BY ICE ONLY	
DOC COMPLAINT FILE NUMBER	
DATE COMPLAINT RECEIVED	
CODE NUMBER	

STATE YOUR COMPLAINT

an institution phone. I have been through maximum and medium security and housed in 2 different centers. In every other place I have been phone calls with staff assistance are routinely allowed. Oakhill is the only exception.

I ask that the OCI policy be changed to permit phone calls to government officials as mandated by DOC 309.39(1).

I also request that I be permitted to call the IRS to find out what happened to my tax refund check.

NAME(S) OF PEOPLE WHO HAVE INFORMATION ABOUT THIS COMPLAINT

SIGNATURE OF OFFENDER OR SPOKESPERSON

Harlan Richards

DATE SIGNED

Oct 10, 2008

NOTICE TO OFFENDER: The ICE will acknowledge your complaint within 5 working days of the date of receipt.

Exhibit C-2

INTERVIEW/INFORMATION REQUEST

Offender Name: <u>Harlan Richards</u>	DOC Number: <u>37975</u>	Living Unit: <u>C-1</u>
Date: <u>9-17-08</u>	Work Assignment: <u>UNAS</u>	

Interview

Information

STATE REASON FOR INTERVIEW OR SPECIFY INFORMATION REQUESTED:

I need to make a phone call to the IRS about my tax return. I have written several letters and not gotten any response. They have a toll-free number but I can't call it from the regular phone on the unit.

(Do Not Write Below This Line)

DISPOSITION OF REQUEST

- You Will Be Interviewed Date: _____ Time: _____
- Information To Follow
- Request Referred To: _____

Information/Comment: _____

Unfortunately, I am not able to facilitate phone calls unless they are emergency in nature.

Thanks,

Mr. Jaeggi

Signed _____

Department _____

Exhibit C-3

TO: Harlan Richards
NUMBER: 37975
UNIT: C-1
DATE: 9-17-08

FOLD

FOLD

DEPARTMENT OF CORRECTIONS
Division of Adult Institutions
DOC-843 (Rev. 03/90)

WISCONSIN

INTERVIEW / INFORMATION REQUEST

TO: Mr. Jaeggi
DEPARTMENT: Social Services
DATE: 9-17-08

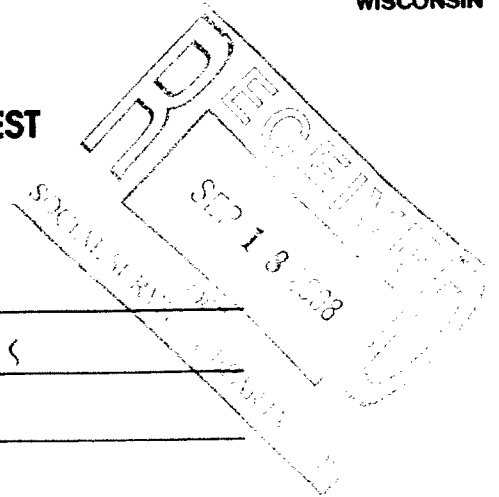


Exhibit C-4

September 21, 2008

Ms. Tanner:

On Sept. 17, 2008, I wrote to social worker Jaeggi asking to make a phone call to the IRS about my tax return. The IRS has a toll-free number but the inmate phone system will not process toll-free numbers. Mr. Jaeggi refused, stating:

"Unfortunately, I am not able to facilitate phone calls unless they are emergency in nature."

I have written 3 letters to the IRS and have not gotten a response. The only way I have to reach them is to call collect. Deb Lance, in dismissing ICRS grievance OCI-2008-19651, stated:

"Mr. Richards may contact the IRS directly in regards to the status of his check . . ."

Further, DOC 309.39(1) states in part:

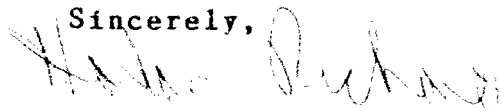
"Inmate telephone calls. (1) The department shall encourage communication between an inmate and an inmate's family, friends, government officials, courts . . ." (emphasis added)

In every other facility I have been in, social workers routinely help make calls like this. Why is Oakhill different?

I need to call the IRS on a toll-free number to find out what happened to my stimulus payment. Sheila Retana sent it back to the IRS without my authorization and now I need to track it down and have it sent elsewhere.

Please let me know what procedure to follow to make this call.

Sincerely,



Harlan Richards 37975

Exhibit C-5

September 30, 2008

Ms. Tanner:

When I spoke to you briefly on the road this afternoon about my request to call the IRS, you stated that you thought Deb Lance had already addressed the issue. She has not. I did not make the request to her so unless you contacted her on the matter she is not aware of my request to call the IRS.

In my Sept. 21st letter, I merely gave you the background information on why I needed to make a phone call to the IRS. This was so that you would know I had a legitimate need to make the phone call. I asked you for the procedure to follow in making the phone call. In every other prison I have been in social workers handle calls like this. As head of social services you would know how to process the request so the call can be made.

I thought my letter was simple and straightforward: You would either tell me how to request the phone call or tell me phone calls to government officials are not permitted. If you refuse to allow me to call, then I will file a grievance with the ICE (Deb Lance) and address whether DOC 309.39(1) permits me to make calls to government officials.

I am facing this situation because Sheila Retana wrongfully returned my tax stimulus check to the IRS without my knowledge or consent. If I cannot resolve this matter informally I will have to file a lawsuit against her - something I do not want to do. Since the IRS will not respond to my letters I do not know why they will not return me check to me. I suspect that Ms. Retana or some other state employee gave the IRS some misinformation which is causing me these problems.

Put yourself in my place. How would you feel if someone took your tax stimulus check out of your mail box and sent it back to the IRS and then you were not allowed to speak to the IRS to get your check back? That is exactly what happened to me. I worked in 2007, paid taxes and am just as entitled as you and Ms. Lance to the federal stimulus payment.

Please authorize my phone call so I can call the IRS.

Sincerely,

Harlan Richards 37975

Exhibit C-6

ICE RECEIPT
COMPLAINT NUMBER OCI-2008-27337
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Date Acknowledged:	October 15, 2008
Subject of Complaint:	12 - Other
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned

This is to acknowledge the complaint you filed and which was received on the date indicated. Depending on the nature of the complaint, you may or may not be interviewed by the ICE. A recommendation on the complaint will be made and submitted to the appropriate reviewing authority within 20 working days of acknowledgement. A decision will be made by the appropriate reviewing authority within 10 working days following receipt of the recommendation unless extended for cause.

Please write to the ICE if this issue is resolved before you receive an answer.

Exhibit C-7

ICE REPORT
COMPLAINT NUMBER OCI-2008-27337
*** ICRS CONFIDENTIAL ***

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Date Complaint Received:	October 15, 2008	Inmate Contacted?	No
Subject of Complaint:	12 - Other		
Document(s) Relied Upon:	DOC 309.39		
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned		
Summary of Facts:	<p>Complains he can not use an institution phone to call the IRS. Wants OCI policy changed to permit phone calls to government officials as mandated by DOC 309.39(1).</p> <p>Calling on an institution phone is not the only manner in which an inmate can contact the IRS. The Social Services Director recommended that the inmate handle all of the issues through the United States Postal Service. It is also recommended that an individual who is not incarcerated assist the inmate with his dealings and contact the IRS on the inmate's behalf.</p> <p>OCI is following the guidelines of DOC 309.39(2) and sub. (10) and there have been no administrative code violations by any DOC staff.</p> <p>You may continue to write the IRS and work out the details with them. If they are not responding to you, that type of complaint needs to be filed with the B.B.B. and not through the ICRS process. No further action will be taken through the ICRS and ICE recommends dismissal of the complaint.</p>		
ICE Recommendation:	Dismissed		
Recommendation Date:	November 12, 2008		



Debra Lance

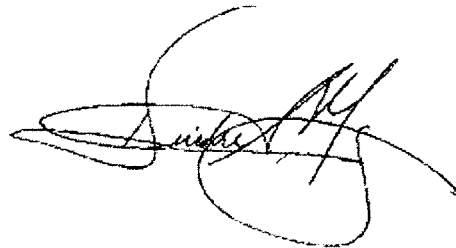
Exhibit C-8

REVIEWER'S DECISION
COMPLAINT NUMBER OCI-2008-27337
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Date Complaint Received:	October 15, 2008
Subject of Complaint:	12 - Other
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned
ICE's Recommendation:	Dismissed
Reviewer's Decision:	Dismissed
Decision Date:	November 12, 2008



Deirdre Morgan

CC:

Distributed via email
Tanner, Christine

A complainant dissatisfied with a decision may, within 10 calendar days after the date of the decision, appeal that decision by filing a written request for review with the Corrections Complaint Examiner on form DOC-405 (DOC 310.13, Wis. Adm. Code).

Exhibit C-9

REQUEST FOR CORRECTIONS COMPLAINT EXAMINER REVIEW

INSTRUCTIONS:

1. Rejected complaints can only be appealed to the appropriate Reviewing Authority. That decision is final.
2. Prepare an original and one copy of this request. Please print or type.
3. Keep the copy of this request for your records and send the original, in a sealed envelope, to:

CORRECTIONS COMPLAINT EXAMINER
DEPARTMENT OF CORRECTIONS
PO BOX 7925
MADISON, WI 53707-7925

PART I - MUST BE COMPLETED

OFFENDER NAME	DOC NUMBER	INSTITUTION (Abbreviate)	COMPLAINT FILE NUMBER
Harlan Richards	37975	OCI	2008-27337

STATE BRIEFLY WHY YOU ARE NOT SATISFIED WITH THE ACTION OF THE APPROPRIATE REVIEWING AUTHORITY

The problem with the ICE's analysis is that it does not address the mandate in DOC 309.39(1) which requires DOC staff to "encourage communications between an inmate and . . . government officials". This does not mean that Deb Lance gets to choose which government official I am allowed to call. It means that procedures should be in place which allow me to call government officials whenever I have a legitimate reason to do so. The reference to DOC 309.39(10) in the decision is ridiculous. To somehow infer that me calling the IRS about my tax stimulus check will impinge on "the security and orderly management of the institution and to protect the public" is bizarre.

Equally fatuous is the recommendation that I contact the Better Business Bureau about the failure of the IRS to answer my letters. The IRS is a federal government organization. The B.B.B. is a private organization that only supervises its own members - all of whom are privately owned businesses.

This entire issue was caused by Shelia Retana returning my tax stimulus check to the IRS. Has she not violated DOC 309.46 I would have had my stimulus check and would not now have to call the IRS. If I do not get my check by Dec. 31, 2008, I forfeit it and can never get it. DOC staff have intentionally gone out of their way to prevent me from getting an entitlement that federal legislation guarantees to me. And now that I am trying to undo the damage they have done, Deb Lance is making sure that I cannot do so.

I want DOC 309.39(1) implemented in OCI and to be allowed to call the IRS.

(CONTINUE ON REVERSE SIDE)

Exhibit C-10

PART 2 – IDENTIFY AND LIST ALL FORMS OF PROOF YOU HAVE OR ARE AWARE OF THAT SUPPORTS YOUR COMPLAINT.

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT

WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

NAME OF PERSON WHO CAN VERIFY YOUR STATEMENT

WHERE CAN THIS PERSON BE REACHED

WHAT WOULD THIS PERSON VERIFY

OTHER (Receipts, property sheets, disciplinary paper work, PRC summaries, etc.)

All relevant documents have been attached to my original greivance.

PART 3 – MUST BE COMPLETED

SIGNATURE OF OFFENDER

DATE SIGNED

Harlan Burkard

Nov 16, 2008

Exhibit C-11

CCE RECEIPT
COMPLAINT NUMBER OCI-2008-27337
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Date Appeal Acknowledged	November 21, 2008
Subject of Complaint:	12 - Other
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned

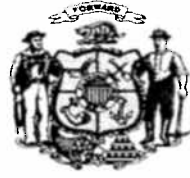
Your request for review has been received.

The Corrections Complaint Examiner (CCE) has 35 working days to submit a recommendation to the Office of the Secretary (OOS) for Review. The OOS has 10 working days to make a decision after receiving the CCE's report. The OOS may extend the time for making a decision for cause and upon notice to all interested parties.

If you do not receive a decision or other notices within that time, you may write directly to:

Secretary of the Department of Corrections
Post Office Box 7925
Madison, WI 53707-7925

Exhibit C-12



Jim Doyle
Governor

Rick Raemisch
Secretary

Mailing Address

3099 E. Washington Ave.
Post Office Box 7925
Madison, WI 53707-7925
Telephone (608) 240-5000
Fax (608) 240-3300

State of Wisconsin
Department of Corrections

December 29, 2008

RICHARDS, Harlan # 37975
Oakhill Correctional Institution
5212 Hwy M.
Oregon, WI 53575

Subject: OCI-2008-27337

Mr. Richards:

This letter is to notify you that, pursuant to § DOC 310.14(1), Wis. Adm. Code, Deputy Secretary Smith has extended the time for deciding this appeal for cause.

Yours truly,

Karen Gourlie

Karen Gourlie
Corrections Complaint Examiner Program Assistant

Copy: Deputy Secretary Smith
Welcome Rose, CCE
Complaint file

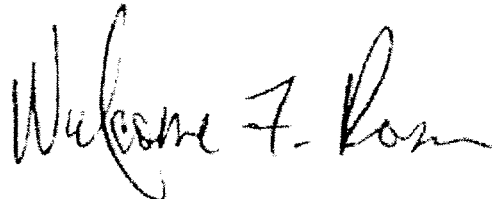
Exhibit C-13

CCE REPORT
COMPLAINT NUMBER OCI-2008-27337
***** ICRS CONFIDENTIAL *****

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Subject of Complaint:	12 - Other		
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned		
Method of Disposition:	Review on Record?	Investigation?	No
CCE's Recommendation:	Dismissed		
	The institution's decision reasonably and appropriately addressed the issue raised by this inmate. On appeal, the inmate presented no information that would warrant a recommendation to overturn that decision. Thus, it is recommended this appeal be dismissed.		
Recommendation Date:	December 11, 2008		



Welcome Rose

Exhibit C-14

OOS REPORT
COMPLAINT NUMBER OCI-2008-27337
*** ICRS CONFIDENTIAL ***

To: RICHARDS, HARLAN C. - #37975
UNIT: 01-1 -- 106-L
OAKHILL CORRECTIONAL INSTITUTION
OREGON, WI 53575-0938

Complaint Information:

Subject of Complaint:	12 - Other
Brief Summary:	Complains of not being allowed to call the IRS in re; stimulus check being returned
OOS Decision:	Dismissed
Decision Comments:	The following is the Secretary's decision on the Corrections Complaint Examiner's recommendation of December 11, 2008 in the above case: The attached Corrections Complaint Examiner's recommendation to dismiss this complaint is accepted as the decision of the Secretary.
Decision Date:	January 07, 2009



Amy Smith

Exhibit C-15