

STATE OF WISCONSIN

Senate Journal

One-Hundred and Third Regular Session

TUESDAY, June 19, 2018

The Chief Clerk made the following entries under the above date.

PETITIONS AND COMMUNICATIONS

State of Wisconsin Office of the Senate Minority Leader

June 15, 2018

The Honorable, the Senate:

Pursuant to Wis. Stats. §15.62 (1)(a), I appoint the following individual to serve on the Ethics Commission:

Tamara Packard of Madison

Sincerely,
JENNIFER SHILLING
Minority Leader

State of Wisconsin Wisconsin Ethics Commission

June 19, 2018

The Honorable, the Senate:

Pursuant to Wis. Stats. §13.685 (7), we are providing the enclosed information. Please visit the Wisconsin Ethics Commission's *Eye on Lobbying* website, <https://lobbying.wi.gov>, for more detailed information about lobbyists, lobbying principals (organizations), and state agency liaisons.

Bohl, James.....City of Milwaukee

Johnson, Kevin.....Amgen

Sincerely,
COLETTE REINKE
Administrator

State of Wisconsin Claims Board

June 11, 2018

Enclosed is the report of the State Claims Board covering the claims heard on May 22, 2018. Those claims approved for payment pursuant to the provisions of s.16.007 and 775.05 Stats., have been paid directly by the Board.

This report is for the information of the Legislature, The Board would appreciate your acceptance and publication of it in the Journal to inform the members of the Legislature.

Sincerely,
GREGORY D. MURRAY
Secretary

STATE OF WISCONSIN CLAIMS BOARD

The State of Wisconsin Claims Board conducted hearings at the State Capitol Building in Madison, Wisconsin, on May 22, 2018, upon the following claims:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
1. Shanquill Bey	Children & Families	\$163,691.53

The following claims were decided without hearings:

<u>Claimant</u>	<u>Agency</u>	<u>Amount</u>
2. Brian St. Lawrence	Transportation	\$681.43
3. Toyota Financial Savings Bank	Financial Institutions	\$6,456.00
4. Janari L. McKinnie	Corrections	\$50.00
5. Frank T. Whitehead	Corrections	\$2,500.00
6. Steven Joseph King	Corrections	\$249.58
7. Michael A. Chesir	Corrections	\$747.59
8. Alphoncy Dangerfield	Corrections	\$43.79
9. Darren Wold	Corrections	\$7,398.98
10. Marteze Harris	Corrections	\$486.26
11. Kenneth R. Hunter	Corrections	\$215.69
12. Dennis S. Rivers	Corrections	\$158.71
13. Charles Wilson	Corrections	\$404.00
14. Fernando Guarnero	Corrections	\$568.08

The Board Finds:

1. **Shanquill Bey** of Milwaukee, Wisconsin claims \$163,691.53 for monies allegedly owed to her licensed child care center. Claimant's center cared for children whose care was subsidized by the Wisconsin Shares program; she did not have private-pay clients. Claimant's center was enrollment-based; she was paid a set weekly amount for each child, regardless of the number of hours they were present that week. On August 20, 2010, the Department of Children and Families suspended Wisconsin Shares payments to claimant's child care center. Claimant states that she was one of many child care centers which were "raided" in the Milwaukee area due to media coverage about child care fraud. She states that she was suspended based on "red flags"

in DCF's system, not due to any finding or evidence of guilt. Claimant was granted a hearing before an administrative law judge, who found that her suspension was not warranted, however, the DCF Secretary overturned the judge's decision. Claimant does not believe this hearing process was fair because the opposing party—DCF—was allowed to make the final decision. Claimant appealed her suspension to Milwaukee County Circuit Court. The court found that DCF violated claimant's due process rights and ordered DCF to issue payments to her for previously provided child care and to resume Wisconsin Shares payments. Claimant alleges that DCF has failed to make the payments ordered by the court and is in contempt of the court order. She alleges that the checks DCF issued in March 2011 were for care provided prior to August 20, 2010, and that she is still owed \$60,336.36 for unpaid child care from October 2010 through early January 2011. Claimant believes that the authorizations for child care issued by DCF constitute contracts and that DCF is in violation of those contracts. Claimant also states that DCF alleged she received overpayments but that these alleged overpayments were based on hourly attendance, even though she was an enrollment-based provider and was not paid hourly. She notes that if her center had been paid on an hourly attendance basis DCF would have, in fact, underpaid her for child care in the amount of \$103,355.17. She does not believe it was fair for DCF to deduct payments from her on an hourly basis for alleged violations, when she was actually reimbursed for fewer hours of care per week than she provided. Claimant believes she was caught up in an overzealous, media-driven campaign to root out alleged fraud in the Wisconsin Shares program. She believes that DCF over-reacted to allegations of very minor violations and points to the fact that both the administrative law judge and the circuit court agreed that her suspension from the program was unwarranted. She believes DCF destroyed her business and requests reimbursement for her damages.

DCF recommends denial of this claim. DCF states that it issues child care authorizations to parents, not child care providers, and therefore had no contract with claimant to provide services. DCF states that the determination of the administrative law judge was only a proposed decision and that the DCF Secretary did not agree with that proposed decision. DCF notes that the circuit court directed DCF to issue payments to claimant for any *eligible* care previously provided and to resume Wisconsin Shares payments for any *eligible* care. DCF did pay claimant for eligible care she provided prior to her suspension, issuing checks on March 24, 2011, in the amounts of \$5,023.45 and \$2,861.36. DCF states that claimant has not submitted any bills for care provided after her suspension, therefore, DCF is not able to pay for that care. DCF believes claimant has submitted no evidence supporting her allegation of underpayment. DCF notes that claimant has pursued her claim for additional money in a variety of forums to no avail. DCF believes her claims are without merit and should be denied.

The Board concludes the claim should be paid in the reduced amount of \$10,000, which is the maximum amount the Board may award on its own motion pursuant to § 16.007(6)(a), based on equitable principles. The Board

further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Children & Families appropriation § 20.437(2)(cm), Stats.

2. Brian St. Lawrence of Brookfield, Wisconsin claims \$681.43 for tire damage due to an October 18, 2017, incident on I-94. Claimant was traveling eastbound in the far-right lane when he noticed two police cars on the left side of the eastbound lanes with their emergency lights activated. The police cars were about 1000 feet apart from one another. The claimant slowly passed the first police car, which was traveling at approximately 35-40 mph. The claimant then slowly passed the second police car, which was parked in the left side emergency lane, with the officer walking from the middle lane back towards the vehicle. As claimant passed both police cars, he watched to make certain the officers did not motion for him to stop or pull over. Neither officer did so. Immediately after passing the second police car, both the tires on the right side of his vehicle went flat and claimant realized he had run over spike strips in the roadway. The vehicle traveling behind him also ran over the spike strips. Both vehicles pulled off to the right shoulder and waited for assistance. The officer who had laid out the spike strips apologized for what had happened and indicated the strips were intended to stop another vehicle farther behind the drivers. The officer arranged to have the vehicles towed and indicated several times that the state would pay for any damages. Several days later, claimant received a call from the State Patrol indicating that the officer had misstated the facts and that claimant would have to fill out paperwork with Risk Management to get reimbursement for the damages. He did so but his claim for reimbursement was denied. Claimant requests reimbursement for the cost of towing his vehicle and replacing his tires.

The Department of Transportation recommends denial of this claim. Trooper Kneisler deployed the spike strips for a high-speed chase; claimant's vehicle was not the intended target. Although Trooper Kneisler did tell claimant the state would pay for the damages, he should not have done so because this is not proper procedure for processing claims. An investigation into claimant's claim for damages found no negligence on the part of any state employee, therefore his claim was denied.

The Board concludes the claim should be paid in the amount of \$681.43 based on equitable principles. The Board further concludes, under authority of § 16.007(6m), Stats., payment should be made from the Department of Transportation appropriation § 20.395(5)(dq), Stats.

3. Toyota Financial Savings Bank of Henderson, Nevada claims \$6,456 for refund of an alleged overpayment of fees due to an error on its Foreign Corporation Annual Report for 2016. Claimant states that its 2016 Wisconsin assets were accidentally overstated on the report, resulting in an incorrect annual fee of \$6,456. Claimant asserts that the correct fee should have been \$0. Claimant requests reimbursement for the overpayment.

The Department of Financial Institutions recommends denial of this claim. DFI notes that it has no means by which

to verify the accuracy of the information provided by claimant, because claimant has exclusive control over the information on which the Annual Report's calculations are based. DFI points to the fact that there was no error by DFI or any of its employees. DFI points to a 1981 letter of the Attorney General opining that filing fees of a foreign corporation that are later alleged to be erroneous are non-refundable. DFI notes that the Claims Board has a history of denying similar claims and recommends that the board deny this claim as well.

The Board notes that claimant would be able to use this overpayment as a credit against fees for future annual reports as the company's capital represented in Wisconsin increases. 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. Janari L. McKinnie of Redgranite, Wisconsin claims \$50 for the value of a money order allegedly stolen by Department of Corrections staff. Claimant is an inmate at Redgranite Correctional Institution (RGCI). Claimant alleges that in July 2017, mailroom staff told him they had received a money order with the wrong address and that claimant needed to mail the money order out of the institution and back to himself at the correct post office box. Claimant did so but alleges that he never received the money order back. He states that his family found that the money order had been cashed by someone other than claimant. Claimant alleges that RGCI mailroom staff stole the money order. He disputes DOC's claim that the money order was deposited in his account. He states that DOC is mixing up the reference numbers on two money orders that were sent to him around the same time and that he received one of the money orders but not the other.

DOC recommends denial of this claim. DOC records indicate that the money order referenced by claimant was deposited to his account on July 17, 2017. Claimant has provided no evidence of a second money order or any negligence on the part of DOC staff.

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. Frank T. Whitehead of New Lisbon, Wisconsin claims \$2,500 for property allegedly damaged or improperly destroyed by Department of Corrections staff. Claimant, an inmate at New Lisbon Correctional Institution, was transferred to segregation on February 20, 2017. His property was packed and inventoried by CO Holsclaw and others. On March 2, 2017, claimant was released from segregation and his property was returned. He states that he noticed right away that the cable connector on the back of his TV was broken off and his TV no longer worked. He points to the fact that CO Holsclaw admits that the TV was working when it was removed from his cell. He believes this is proof that the

TV was damaged while under staff control. Claimant also alleges that he is missing four typewriter ribbons from his property. He alleges he had four new ribbons and seven or eight old ribbons in his possession when he was sent to segregation. He believes that DOC staff accidentally threw away the new ribbons when they inventoried his property. Claimant also alleges that four pictures are missing from his property, two related to a court case and two which had priceless sentimental value. Claimant filed inmate complaints regarding his damaged TV, missing typewriter ribbons, and missing pictures. All of his complaints were denied. Claimant alleges that CO Holsclaw has a history of breaking or throwing out the property of African American inmates. He believes his rights have been violated and requests reimbursement of \$2,500 for his property.

DOC recommends denial of this claim. Claimant filed three inmate complaints regarding his damaged TV and allegedly missing property. DOC investigations found no evidence of DOC staff negligence and his complaints were denied. During the packing and inventorying of claimant's property, it was discovered that his TV had a large amount of tape connecting the wires/cables and TV together. Pursuant to DOC policy, which does not allow inmates to possess damaged or altered items, this tape was removed as contraband. It is possible that claimant's TV was working at the time he was sent to segregation only because of the tape holding it together, but that does not change the fact that the TV was damaged and altered prior to being in DOC's possession. Claimant has presented no evidence that DOC staff damaged his TV. Inmates are allowed to have six typewriter ribbons in their possession. DOC's inventory records indicate that claimant had seven ribbons upon his transfer to seg. and that one was properly disposed of pursuant to the property limit. Claimant has presented no evidence that DOC improperly destroyed four typewriter ribbons. DOC inventory records also indicate that claimant had 50 pictures in his possession at the time of his transfer and that 50 pictures were returned to him. Claimant has presented no evidence that DOC destroyed any pictures. DOC believes that claimant has failed to present any evidence of DOC negligence and recommends denial 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.

6. Steven Joseph King of Waupun, Wisconsin claims \$249.58 for the value of a TV, fan, radio, and sandals allegedly lost or damaged by Department of Corrections staff. Claimant is an inmate at Waupun Correctional Institution. On January 11, 2018, he was sent to temporary lock-up (TLU). He states that he had all four of these items in his possession and that they were all in working order at the time of his transfer to TLU. When he received a copy of his property inventory form on January 16th, his sandals and radio were not listed on the form and he was told his TV and fan were broken and therefore contraband. Claimant states

that only DOC staff had access to the items in his cell at the time of his transfer to TLU. He points to a November 2017 property inventory that showed he had all four items in his possession. He also points to the fact that after his prior transfer from TLU on January 5, 2018, his TV and fan were returned to him, which would not have happened if they had been broken. Claimant believes DOC staff was negligent in handling his property and requests reimbursement.

DOC recommends denial of this claim. An investigation into claimant's complaint found that his fan and TV were inspected on January 11th and that the fan's power cord and the TV's "F" jack were missing. Because both items were broken, they were designated as contraband. The investigation also found no evidence that claimant had sandals or a radio in his possession at the time he was transferred to TLU. DOC notes that the property inventory from claimant's most recent transfer to TLU did not list a radio or sandals as being in his possession.

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. Michael Chesir of Stanley, Wisconsin claims \$747.59 for repayment of restitution and court fees deducted from his inmate account. Claimant was convicted in February 1997. In August 1997, he notified the court that he disagreed with the restitution determination and wanted a restitution hearing. The court never held a restitution hearing for claimant. In June 2005, the court filed a restitution order and the Department of Corrections began deducting restitution from claimant's inmate account. In June 2017, claimant filed a motion asking the court to vacate the restitution order. In its September 2017 decision, Milwaukee County Circuit Court found that the 2005 restitution order had been incorrectly filed without granting claimant a restitution hearing. The court also found that the more than 20-year delay between claimant's sentencing and the restitution order was without justification and prejudicial to claimant. The court vacated claimant's restitution order *nunc pro tunc* "to facilitate the [claimant's] opportunity for reimbursement of funds deducted from his inmate account for restitution in this case." Claimant points to a DOC memo dated January 19, 2017, which states that the "only refunds will be for those that have Restitution obligations" as proof that the deducted restitution is refundable by DOC. Claimant notes that he is not requesting a refund from the entity who received the restitution, as alleged by DOC. He is requesting that DOC pay the refund based on equitable principles. Claimant also notes that DOC's reference to *State v. Minniecheske* is irrelevant because he is not requesting that the court order a refund, but that the Claims Board provide the refund based on equitable principles.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC had no reason not to make restitution deductions from claimant's account based on the 2005 restitution order. DOC is charged with the supervision

of inmates, including their funds. Wis. Stat. § 301.32(1), authorizes DOC to use inmate funds "for the benefit of the prisoner" and paying down an inmate's lawful debt is clearly to his benefit. DOC notes that 2015 Act 355 amended § 301.32 to expressly authorize DOC to use an inmate's funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC points to Division of Adult Institution Policy 309.45.02, which provides that if an inmate receives an amended Judgement of Conviction, DOC is not responsible to seek reimbursement from the entity that received the funds. DOC believes that doing so would revictimize the victim. In addition, DOC points to *State v. Minniecheske*, which found that a sentencing court lacks competency to order the state to reimburse inmates for money taken from their accounts. Finally, DOC states that the January 29, 2017, memo referenced by claimant is completely unrelated to the collection of court ordered restitution and is therefore not relevant to 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. Alphoncy Dangerfield of Boscobel, Wisconsin claims \$43.79 for refund of court costs deducted from his inmate account. In 2016, the Department of Corrections began deducting victim/witness surcharges and court fees from claimant's inmate account for court obligations incurred in 1991. Claimant told DOC that he had previously paid these obligations and DOC investigated his account history. Because they did not have records prior to 1994, DOC refunded the \$50 victim/witness surcharge to claimant. DOC told claimant that the court had indicated that the remaining court fees had not been paid, so DOC declined to refund that amount. Claimant notes that DOC has provided no evidence from the court that these fees were not previously paid. Claimant also points to the fact that DOC rules prevent inmates from depositing money into their release account until their court obligations are paid in full. Claimant states that the fact that he has \$500 in his release account proves that his court obligations were previously paid.

DOC recommends denial of this claim. DOC's investigation determined that claimant was due a refund for his victim/witness surcharge and that amount was returned to him. In August 2017, DOC contacted the court, which verified that the court costs were still outstanding. DOC is statutorily mandated to remit payment of court-ordered surcharges. DOC believes claimant has provided no evidence that these fees were previously paid and that the claim should be denied.

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.

9. Darren Wold of Green Bay, Wisconsin claims \$7,398.98 for child support deductions made from his inmate account by the Department of Corrections. Claimant states that DOC deducted 65% for court-ordered child support obligations from all money he earned or received from 2012 to 2017. He alleges that deducting child support obligations from gifted funds was a violation of Wis. Stat. § 767.75(1f), which specifically states that child support assignments do not apply to gifted monies. Claimant points to the fact that DOC's own policy, DAI 309.45.02 also references Wis. Stat. § 767.75. He points to his June 2017 hearing, where Washington County Court Commissioner Dolores Bomrad stated, "The Department of Corrections routinely takes money out of gift money that inmates receive. That's not the law." On July 10, 2017, the court issued an order clarifying that claimant's child support obligations should not be deducted from gifted funds. Claimant filed multiple complaints with DOC to try and get the deductions halted and receive a refund of the gift money deductions, but DOC denied his complaints. He believes that DOC is deliberately misinterpreting Wis. Stat. § 767.75 and has been illegally taking money from his account. He requests reimbursement of that money.

DOC recommends denial of this claim. Pursuant to DOC policy DAI 309.45.02, child support obligations are deducted from all inmate funds unless the child support order specifically states that deductions will only be taken from wages. Claimant's original child support order did not specify that his deductions should only be taken from wages. In 2015, claimant filed an inmate complaint regarding the deductions. A DOC investigation found that his child support deductions were proper, and his complaint was denied. Claimant did not appeal that decision. In March 2017, claimant filed another complaint regarding his child support deductions. DOC's investigation found that those deductions were only being made from claimant's wages and his complaint was denied. He did not appeal that decision. On July 10, 2017, the court issued a clarifying order that claimant's child support deductions should not come from his gifted funds. Since that time, claimant's child support obligations have only been deducted from his wages, not gifted funds. Claimant has submitted no evidence of any negligence on the part of DOC staff. Finally, DOC notes that the funds being claimed were applied to claimant's outstanding child support obligations and DOC does not believe the state should reimburse him on equitable principles for child support he legally owes.

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.

10. Marteze Harris of Boscobel, Wisconsin claims \$486.26 for repayment of restitution and court fees deducted from his inmate account. Claimant was sentenced in June 1996. At the time of his sentence, his restitution was "to be determined." In 2001, he was asked to agree to and sign a restitution order. He notified the court that he disagreed with

the restitution determination and wanted a restitution hearing. The court never held a restitution hearing for claimant. In December 2001, the court filed a restitution order without having provided claimant with a restitution hearing. In October 2016, the Department of Corrections began deducting restitution from claimant's inmate account. In September 2017, Milwaukee County Circuit Court vacated claimant's restitution order and adjusted his restitution to zero, *nunc pro tunc*. Claimant petitioned the court several times for refund of the money already taken from his inmate account but was denied. He also pursued the available administrative remedies through DOC but was denied. Claimant points to *State v. Minniecheske* in which the court found that, although it lacked jurisdiction to refund improperly seized restitution, Minniecheske "could file a claim with the state claims board which is specifically authorized to remedy claims such as those Minniecheske asserts." Based on that decision, claimant believes the Claims Board should reimburse him for the money taken from his account.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC had no reason not to make restitution deductions from claimant's account based on the December 2001 restitution order. DOC is charged with the supervision of inmates, including their funds. Wis. Stat. § 301.32(1), authorizes DOC to use inmate funds "for the benefit of the prisoner" and paying down an inmate's lawful debt is clearly to his benefit. DOC further notes that 2015 Act 355 amended § 301.32 to expressly authorize DOC to use an inmate's funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC points to Division of Adult Institution Policy 309.45.02, which provides that if an inmate receives an amended Judgement of Conviction, DOC is not responsible to seek reimbursement from the entity that receives the funds. DOC believes that doing so would revictimize the victim. In addition, DOC points to *State v. Minniecheske*, which found that a sentencing court lacks competency to order the state to reimburse inmates for money taken from their accounts.

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.

11. Kenneth R. Hunter of Prairie du Chien, Wisconsin claims \$215.69 for return of monies deducted from his inmate account at Redgranite Correctional Institution. In late 2016, the Department of Corrections switched to a new computer software for managing inmate accounts. After the change to the new software, DOC began deducting money from claimant's account for allegedly unpaid court obligations relating to convictions in 1987. Claimant filed an inmate complaint which was denied, as was his appeal. Claimant believes that DOC is barred from taking these funds by the statute of limitations set forth in Wis. Stat. § 893.40, as well as *State v. Hamilton*. Claimant further believes that DOC's rule DAI 309.45.02 is in violation of Wis. Stat. §

227.10, which provides that agencies may not promulgate rules which conflict with state law. Claimant notes that other inmates have been able to prove the new computer software has double charged for previously paid court obligations and have been reimbursed by DOC. However, DOC has lost account records prior to 1992, therefore, inmates with earlier obligations, such as claimant, are unable to prove those obligations have already been paid. Claimant does not believe it is legal or equitable for DOC to wait 29 years to collect these allegedly unpaid obligations. He requests reimbursement of the money collected by DOC.

DOC recommends denial of this claim. DOC notes that claimant has provided no proof that he previously paid these court obligations. DOC investigated his inmate complaint and “no incorrect deductions were found.” That decision was upheld on appeal because claimant “presented no evidence to support a recommendation of overturning” the original decision. Regarding claimant’s allegation that DOC is time-barred from collecting these costs by Wis. Stat. § 893.40 and *State v. Hamilton*, DOC notes that § 893.40 relates to the commencement of an action on a civil judgment and *Hamilton* applies to a civil action to collect child support. Neither of these standards apply because DOC has not initiated an action against claimant, it is simply following its statutory mandate to collect court-imposed obligations. In addition, DOC notes that DAI 309.45.02 does not violate Wis. Stat. § 227.10, because it is a policy, not an administrative code promulgated by DOC. Finally, DOC believes there is no equitable argument for payment of this claim because the obligations being deducted from claimant go to the Crime Victim Witness Surcharge, which reimburses counties for important programs such as victim social services referrals, compensation, and support.

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.

12. Dennis S. Rivers of Waupun, Wisconsin claims \$158.71 for return of restitution money deducted from his inmate account. In August 2008, claimant was convicted in case no. 07CF843 and sentenced to probation to be served consecutive to his present sentence. He was also ordered to pay restitution by January 2009 as a condition of his probation. While claimant has been incarcerated on another conviction, the Department of Corrections has deducted money from his account for payment of the restitution ordered in case no. 07CF843. Claimant states that because his Judgement of Conviction does not state that he is ordered to pay restitution while incarcerated, DOC’s deductions are illegal and in violation of Wis. Stats. § 807.03 and § 807.11. He requests reimbursement of the money deducted from his account for this restitution.

DOC recommends denial of this claim. Claimant was clearly ordered by the court to pay \$2,426.29 in restitution for case no. 07CF843. Wis. Stat. §301.31 authorizes DOC to use inmate funds to pay obligations of a prisoner that have been reduced to judgement. 2015 Act 355 amended Wis. Stat.

§ 301.32 to expressly authorize DOC to use a prisoner’s money to pay applicable surcharges or victim restitution, or otherwise for the benefit of the prisoner. Paying down a prisoner’s lawful debts is clearly to his benefit. DOC states that it has lawfully deducted these funds from claimant’s inmate account according to DOC policy and state law and claimant has presented no evidence to the contrary.

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.

13. Charles Wilson of Fox Lake, Wisconsin claims \$404 for refund of restitution deducted from his inmate account. Claimant was sentenced in July 2000. At the time of his sentencing his restitution was “to be determined.” Claimant states that he should have been granted a restitution hearing by September 2000 pursuant to Wis. Stat. § 973.20(13)(c), but that no restitution hearing took place. He alleges that in 2006, Probation and Parole Agent Brian Engholdt submitted a forged document to the court stating that a restitution amount of \$5,000 had “been reviewed with” claimant and that claimant agreed with the restitution amount and waived his right to a hearing. Claimant alleges that he never met with Mr. Engholdt or agreed to this restitution. Based on this document, the court entered an amended Judgement of Conviction. Claimant states that he was never provided with a copy of the amended JOC and was unaware of it. The Department of Corrections did not begin deducting this restitution until the implementation of new computer software in late 2016. Claimant states that he first became aware of the amended JOC at this time. Claimant challenged the restitution in circuit court and the court vacated the restitution order and reduced the restitution amount to zero. Claimant requests reimbursement of the restitution money taken from his account.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC had no reason not to make restitution deductions from claimant’s account based on the 2006 restitution order. DOC is charged with the supervision of inmates, including their funds. Wis. Stat. § 301.32(1), authorizes DOC to use inmate funds “for the benefit of the prisoner” and paying down an inmate’s lawful debt is clearly to his benefit. DOC notes that 2015 Act 355 amended § 301.32 to expressly authorize DOC to use an inmate’s funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC points to Division of Adult Institution Policy 309.45.02, which provides that if an inmate receives an amended Judgement of Conviction, DOC is not responsible to seek reimbursement from the entity that received the funds. DOC believes that doing so would revictimize the victim. Finally, DOC notes that there is an explicit constitutional mandate for paying restitution. The funds deducted from claimant’s account were not held for the benefit of DOC, but were applied towards his restitution obligation, a right due the victim of his crime.

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.

14. Fernando Guarnero of Green Bay, Wisconsin claims \$568.08 for refund of restitution and court costs deducted from his inmate account. Claimant was convicted in March 1999. At the time of his sentencing his Judgment of Conviction indicated that restitution was “to be determined.” In December 2000, claimant received a memo from the Department of Corrections indicating a restitution amount of \$9,819.38 plus court costs. Claimant selected the “Disagree” box on the memo, which should have triggered a restitution hearing before the court. No restitution hearing was held, and claimant heard nothing further about any owed restitution until November 2016, when DOC began deducting the restitution money from his inmate account. Claimant filed a court action challenging the restitution on the grounds that he had never been given a restitution hearing. The court agreed that the restitution order was not valid and reduced the restitution amount to zero. Claimant believes that the restitution order was illegal, and that DOC should be required to refund the money previously taken from his account. Claimant points to *State v. Minniecheske*, which specifically states that the Claims Board is authorized to remedy these types of claims.

DOC recommends denial of this claim because the department was following the directives of a valid court order and was not negligent. DOC had no reason not to make restitution deductions from claimant’s account based on the restitution order. DOC is charged with the supervision of inmates, including their funds. Wis. Stat. § 301.32(1), authorizes DOC to use inmate funds “for the benefit of the prisoner” and paying down an inmate’s lawful debt is clearly to his benefit. DOC notes that 2015 Act 355 amended § 301.32 to expressly authorize DOC to use an inmate’s funds for payment towards applicable surcharges, victim restitution, or the benefit of the prisoner. DOC points to Division of Adult Institution Policy 309.45.02, which provides that if an inmate receives an amended Judgment of Conviction, DOC is not responsible to seek reimbursement from the entity that received the funds. DOC believes that doing so would revictimize the victim. DOC notes that although *State v. Minniecheske*, permits claimant to seek recovery from the Claims Board, that does not justify payment of the claim unless it is legally sufficient under Wis. Stats. § 16.007(5), which this claim is not.

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 claimants are denied:

Toyota Financial Savings Bank
Janari L. McKinnie

Frank T. Whitehead
Steven Joseph King
Michael A. Chesir
Alphoncy Dangerfield
Darren Wold
Marteze Harris
Kenneth R. Hunter
Dennis S. Rivers
Charles Wilson
Fernando Guarnero

That payment of the amounts below to the identified claimants from the following statutory appropriations is justified under § 16.007 (6)(b), Stats:

Shanquil Bey	\$10,000.00	§ 20.437 (2)(cm) Stats.
Brian St. Lawrence	\$681.43	§ 20.395 (5)(dq) Stats.

Dated at Madison, Wisconsin this 8th day of June, 2018.

COREY FINKELMEYER

Chair, Representative of the Attorney General

CHRISTOPHER N. GREEN

Secretary, Representative of the Secretary of Administration

LUTHER OLSEN

Senate Finance Committee

MARY FELZKOWSKI

Assembly Finance Committee

REFERRALS AND RECEIPT OF COMMITTEE REPORTS CONCERNING PROPOSED ADMINISTRATIVE RULES

The joint committee for review of **Administrative Rules** reported and recommended:

Senate Clearinghouse Rule 15-054

Relating to wild life rehabilitation.

No action taken on June 15, 2018.

Senate Clearinghouse Rule 17-010

Relating to courses of study for and delegation to chiropractic technicians and chiropractic radiological technicians.

No action taken on June 11, 2018.

Senate Clearinghouse Rule 18-011

Relating to the Service Award Program.

No action taken on June 11, 2018.

Senate Clearinghouse Rule 18-013

Relating to an order of selection for vocational rehabilitation services.

No action taken on June 11, 2018.

STEPHEN NASS

Senate Chairperson