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NO. 366707

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

In re:

ESTATE OF SHENNEN GOODYEAR-BLACKBURN
(substituted for Shennen Goodyear-Blackburn),

Appellant,

v.

SHAWN BLACKBURN,

Respondent.

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES'S
AMICUS CURIAE BRIEF**

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I. INTRODUCTION

A court order requires Mr. Shawn Blackburn to pay child support and one hundred percent of daycare costs. The Department of Social and Health Services (DSHS) set the dollar amount of Mr. Blackburn's daycare obligation administratively. Mr. Blackburn claims that he overpaid daycare by \$44,300 and requests reimbursement. Typically, overpaid daycare is recouped by offsetting it against current child support. This reduces the funds available to meet the children's current needs.

In this case of first impression, DSHS urges the Court to rule that the catchall two-year statute of limitations applies to daycare overpayment claims. The much longer time limits for enforcing "past due child support" or "an action upon a judgment" do not apply. The time limit for enforcing past due support does not apply because Ms. Goodyear-Blackburn was never ordered to pay child support and does not have a past due child support obligation. The time limit for an action upon a judgment does not apply because Mr. Blackburn is asserting a claim for overpaid daycare and not enforcing a judgment.

The two-year limit is also consistent with the goals and objectives of the child support statutes. If a parent can wait ten years, or longer, to make a daycare overpayment claim, as asserted by Mr. Blackburn, fewer children will receive adequate financial support from their parents. The long

time limit will make it difficult for the custodial parent to procure proof of past daycare costs, and large sums may be in dispute. This combination will thwart the state's compelling interest in protecting the welfare of children and force more families to become reliant on public assistance to meet their basic needs.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

DSHS provides child support establishment and enforcement services in the state of Washington. RCW 74.20.010; RCW 74.20A.010; RCW 26.23.010; RCW 26.23.030. DSHS transforms lives by assisting children to receive parental financial support, commensurate with parental income and resources, so they can become productive adults. DSHS's duties include enforcing child support obligations to assist families to become or remain self-sufficient, and thereby reduce the financial burden borne by taxpayers through public assistance programs. *Id.*

DSHS has a compelling interest in protecting the welfare of children by ensuring they receive the financial support to which they are entitled. A long statute of limitations period for asserting a claim for overpaid daycare will thwart this interest; daycare recipients will have great difficulty meeting their burden of proof, and large sums may be in dispute. If many years of undocumented daycare expenses can be offset against the paying parent's current child support obligation, fewer children will receive

adequate financial support and more families will turn to public assistance to meet their basic needs.

III. ISSUE ADDRESSED BY AMICUS

State law permits parents to recoup overpaid daycare if the payment exceeds 20 percent of annual daycare costs. Which statute of limitations applies to recouping daycare overpayments under RCW 26.19.080?

IV. STATUTORY AND REGULATORY BACKGROUND

In Washington, the paying parent's child support obligation is determined under the statewide child support schedule. RCW 26.19.035. In addition to paying basic support, the parent can be ordered to pay a percentage of special expenses, like daycare. RCW 26.19.020; RCW 26.19.080(3). If the court considers daycare expenses to be reasonable and necessary, both parents share these costs based on each parent's proportionate share of combined parental income. *In re Yeamans*, 117 Wn. App. 593, 599-600, 72 P.3d 775 (2003); RCW 26.19.080(3). Daycare costs fluctuate due to changes in the children's ages, amount of care provided, specific provider selected, and other factors. Therefore, it is common for daycare obligations to be set as a percentage of the total daycare cost instead of at a fixed dollar amount.¹ This provides the parents

¹ For example, if a father makes 60 percent of the combined parental income, the father will be ordered to pay 60 percent of the total daycare costs and the mother will be ordered to pay the remaining 40 percent. RCW 26.19.080(3). If daycare costs decrease

with the flexibility to adjust the amount of the paying parent's daycare obligation without the necessity of returning to court to change the order.²

Courts and DSHS are both able to set daycare at a fixed dollar amount to implement a daycare order that sets the amount as a percentage. *See* RCW 26.23.110(1)(a); *see also In re Marriage of Shortway*, 4 Wn. App. 2d 409, 423 P.3d 270 (2018). When DSHS sets the fixed-dollar obligation, both parents have an opportunity to request an evidentiary hearing before an Administrative Law Judge. RCW 26.23.110; WAC 388-14A-3315 to -3317. Every 12 months, either parent may request an administrative review of the daycare amount previously set. RCW 26.23.110(12), (13); WAC 388-14A-3330.

If the paying parent makes a payment to satisfy a daycare obligation set by the court or DSHS, but the daycare costs are not actually incurred, the paying parent can seek reimbursement from the receiving parent. RCW 26.19.080(3); WAC 388-14A-4300; *Fairchild v. Davis*, 148 Wn. App. 828, 831-32, 207 P.3d 449 (2009). The overpayment can only be recouped if it is 20 percent or more of the paying parent's annual daycare cost. *Id.* The receiving parent has the burden of proving actual

from \$600 per month to \$300 per month after the child starts school, the father's obligation will decrease under the order from \$360 per month to \$180 per month.

² Child support obligations, including daycare expenses, that are set at specific dollar amounts cannot be modified or adjusted unless the criteria in RCW 26.09.170 are met.

daycare expenses through cancelled checks, prior tax returns, or declarations of childcare providers. *Fairchild*, 148 Wn. App. at 832-33; WAC 388-14A-4303(2).

A parent who has overpaid daycare can seek reimbursement judicially or administratively. RCW 26.19.080(3); WAC 388-14A-4300. If there has been a qualifying overpayment, and the paying parent also owes back child support, the overpayment will be offset against the paying parent's arrearages. RCW 26.19.080(3); WAC 388-14A-4304; *Fairchild*, 148 Wn. App. at 832. If the paying parent has no child support arrearages or they are insufficient, the paying parent is entitled to direct reimbursement from the receiving parent or a credit against future child support. RCW 26.19.080(3); WAC 388-14A-4304. When the overpayment is credited against future child support, the credit must be spread out equally, over a 12-month period. *Id.*

V. STATEMENT OF THE CASE

On October 23, 2009, Mr. Shawn Blackburn and Ms. Shennen Goodyear-Blackburn legally separated. CP at 23, 32, 51. At the time, their child was five. CP at 1. Ms. Goodyear-Blackburn was made the primary residential parent and Mr. Blackburn was ordered to pay \$1,000 per month for child support. CP at 2-3, 10-11, 34. Mr. Blackburn was also ordered to pay one hundred percent of daycare costs. CP at 13.

On April 16, 2010, Ms. Goodyear-Blackburn filed a motion to convert the Separation Decree into a Decree of Dissolution. CP at 37. Mr. Blackburn objected that the terms were unfair, but Ms. Goodyear-Blackburn's motion was granted since both parties had signed the petition. CP at 38-92, 96.

Neither parent attempted to modify the 2009 child support order requiring Mr. Blackburn to pay \$1,000 per month for child support and one hundred percent of daycare costs. CP at 294-97. If requested, DSHS would have provided modification services without charge. *See* RCW 26.09.170(8)(b); RCW 26.09.175(3)(b); WAC 388-14A-1030(3).

Because the order does not set daycare at a sum certain, DSHS established the dollar amount of Mr. Blackburn's monthly obligation administratively. CP at 13. Initially, DSHS set Mr. Blackburn's daycare obligation at \$300 per month beginning February 1, 2010, by serving Mr. Blackburn a Notice of Support Owed. CP at 285-87, 294. The Notice informed Mr. Blackburn that if he did not agree with the amount in the notice he could request an administrative hearing by filling out the enclosed form. CP at 286. The Notice became a final order when Mr. Blackburn failed to contest the Notice.³ CP at 294; RCW 26.23.110(8). A couple of

³ This is analogous to default orders in judicial proceedings.

years later, at Ms. Goodyear-Blackburn's request, DSHS issued another Notice of Support Owed that increased the amount of Mr. Blackburn's daycare obligation to \$650 per month beginning June 1, 2012. CP at 280-82. Mr. Blackburn again failed to request an administrative hearing to contest the amount in the Notice, and it became a final order. CP at 294.

Neither parent requested DSHS to reassess Mr. Blackburn's \$650 per month daycare obligation for close to six years. In June 2018, shortly after his child's fourteenth birthday, Mr. Blackburn disputed the amount of his daycare obligation and requested a review. CP at 26, 104.

Because Ms. Goodyear-Blackburn did not provide verification of actual amounts she paid for daycare from June 1, 2012, through May 31, 2018, DSHS sent out a Notice of Support Owed that included an overpayment calculation based on the presumption that Ms. Goodyear-Blackburn had incurred no daycare expenses from June 1, 2012, through May 31, 2018. CP at 103-04. DSHS calculated the overpayment at \$46,800.⁴ The Notice stated that Mr. Blackburn would receive credit against his child support obligation for the next 12 months but that DSHS could not

⁴ DSHS provides a forum for determining whether daycare has been overpaid and reimbursement should be ordered. DSHS is a neutral party in daycare overpayment disputes. In the absence of clarifying case law, DSHS has left it up to the parties to assert appropriate defenses.

provide any additional relief.⁵ CP at 104. This notice never became an administrative order under RCW 26.23.110 and WAC 388-14A-4303 because Ms. Goodyear-Blackburn made a timely request for an administrative hearing to contest the notice. CP at 111-113. Because the parents preferred to resolve the daycare dispute judicially, the administrative proceeding was periodically continued to provide time for the superior court to decide the issue and eventually dismissed without reaching the merits. CP at 114, 247, 316, 370-74, 385-86.

On September 17, 2018, Mr. Blackburn filed a motion in superior court directing Ms. Goodyear-Blackburn to show cause why a judgment for \$44,300 in overpaid daycare should not be entered against her. CP at 98. Mr. Blackburn arrived at the \$44,300 figure by using DSHS's overpayment calculation, which totaled up the amount he paid for daycare from June 2012 forward, and subtracting \$3,500 that Ms. Goodyear-Blackburn had already repaid. CP at 99, 104.

Ms. Goodyear-Blackburn argued to the trial judge that the catchall two-year statute of limitations in RCW 4.16.130 applies to daycare overpayments. CP at 240-41. Mr. Blackburn countered that the ten-year statute of limitations for an action upon a judgment or decree in

⁵ The daycare overpayment statute authorizes reimbursement against one year of future child support. RCW 26.19.080(3). DSHS lacks the ability to provide other forms of relief.

RCW 4.16.020(2) applies. CP at 275. The trial court rejected both arguments and instead ruled that RCW 4.16.020(3) controls. CP at 373. This statute permits past due child support accruing under a judicial or administrative order to be collected for ten years after the youngest child in the order turns eighteen. CP at 373.

The superior court found that Ms. Goodyear-Blackburn “failed to provide any documents such as receipts, cancelled checks or billing statements showing she had actually incurred any daycare costs” CP at 372.⁶ The court entered a judgment against Ms. Goodyear-Blackburn for the amount Mr. Blackburn requested: \$43,300. CP at 99, 370, 374.

VI. ARGUMENT

A. Standard of Review

The question of whether the statute of limitations precludes a portion of Mr. Blackburn’s claim for reimbursement of overpaid daycare presents a mixed question of fact and law. *See Ellis v. Barto*, 82 Wn. App. 454, 457, 918 P.2d 540 (1996). But the narrower issue addressed by amicus is which statute of limitations applies. This involves statutory construction, which

⁶ Ms. Goodyear-Blackburn used a DSHS-provided form captioned “Child Care Verification Response” to declare under penalty of perjury that she incurred \$15,500 in child care expenses from November 2012 through May 2013, September 2013 through February 2014, and June 2017 through September 2017. CP at 117-19. There is a line on the form for child care providers to also attest to the accuracy of the monthly daycare costs. CP at 117-19. Ms. Goodyear-Blackburn obtained the signature of her child care provider on the form covering her monthly child care expenses in 2017, but not the forms covering earlier years. CP at 117-19.

presents a question of law. *City of Pasco v. Pub. Emp't Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992). Questions of law are reviewed de novo. *Id.*

B. The Two-Year Catchall Statute Applies to Daycare Overpayments Because No Other Statute Applies

Because there is no specific statute of limitations that applies to recouping daycare overpayments, the two-year catchall statute of limitations applies. *See* RCW 4.16.130. The two-year statute states in its entirety: “An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.” *Id.* It is well-settled that this catchall statute of limitations controls when no other statute sets a time limit for commencing the particular action at issue. *See* RCW 4.16.130; *Thompson v. Wilson*, 142 Wn. App. 803, 812-13, 175 P.3d 1149 (2008); 15A Douglas J. Ende, *Washington Practice: Handbook on Civil Procedure* § 5.22 (2018-2019 ed.).

Here, there is no other statute of limitations that applies to an action to recoup overpaid daycare. The statute of limitations for enforcing “past due child support” does not apply; Ms. Goodyear-Blackburn was never ordered to pay child support and did not accrue a past due child support obligation. *See* RCW 4.16.020(3). The statute of limitations for enforcing

an action “upon a judgment or decree” does not apply either since Mr. Blackburn does not have an enforceable judgment. *See* RCW 4.16.020.

Statutes of limitation are fundamental to a well-ordered judicial system by advancing the important societal goal of limiting litigation to periods when witnesses are still available and memories are clear. *Bd. of Regents v. Tomanio*, 446 U.S. 478, 487, 100 S. Ct. 1790, 64 L. Ed. 2d 440 (1980); *Summerrise v. Stephens*, 75 Wn.2d 808, 812, 454 P.2d 224 (1969). The two-year catchall statute has the additional purpose of ensuring that persons will not be left “fearful of litigation unlimited by time” because no statute of limitations applies to the claim. *Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 721, 709 P.2d 793 (1985).

1. The daycare overpayment statute does not contain a statute of limitations

The daycare overpayment statute describes when reimbursement is required but does not contain a statute of limitations or reference one. *See* RCW 26.19.080. The overpayment provision states in pertinent part:

If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor’s annual day care or special child rearing expenses. The obligor may institute an action in superior court or file an application for an adjudicative hearing with the department of social and health services for

reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses.

RCW 26.19.080(3). Because the statute does not provide a specific statute of limitations, the two-year catchall limit in RCW 4.16.130 controls obtaining reimbursement for daycare overpayments.

2. The statute of limitations that applies to past due child support in RCW 4.16.020(3) does not apply to overpaid daycare actions

The trial court erred when it applied the statute of limitations for *enforcing past due child support* to Mr. Blackburn's action to *recoup overpaid daycare*. Mr. Blackburn is not enforcing a past due child support obligation; Ms. Goodyear-Blackburn was never ordered to pay child support to him.

When a parent owes back child support, actions to enforce the obligation must be commenced within the time limit established in RCW 4.16.020(3). This statute provides in relevant part:

The period prescribed for the commencement of actions shall be as follows: . . . Within ten years: . . . (3) Of the eighteenth birthday of the youngest child named in the order for whom support is ordered for *an action to collect past due child support* that has accrued under an order entered after July 23, 1989, by any of the above-named courts or that has accrued under an administrative order as defined in RCW 74.20A.020(6), which is issued after July 23, 1989.

RCW 4.16.020 (emphasis added) (source formatting omitted).

This statute sets the duration for enforcing accrued but unpaid child support judgments. *See* 28 Marjorie Dick Rombauer, *Washington Practice: Creditor's Remedies-Debtor's Relief* § 7.12 (2018). Under this statute, enforcement actions for past due child support must occur before the youngest child named in the order turns 28. RCW 4.16.020(3).

When a court construes a statute, its goal is to determine and carry out the Legislature's intent. *Christensen v. Ellesworth*, 162 Wn.2d 365, 372, 173 P.3d 228 (2007). When a statute's meaning is plain on its face, "the court must give effect to that plain meaning as an expression of legislative intent." *Id.* at 372-73; *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Courts regularly rely on dictionary definitions of the material terms in a statute to discern the plain meaning of a statute, and that approach is helpful here. *See Nissen v. Pierce Cty.*, 183 Wn.2d 863, 881, 357 P.3d 45 (2015).

By its terms, RCW 4.16.020(3) applies to "action[s] to collect *past due* child support," which is distinct from an action to recoup day care "overpayments." RCW 4.16.020(3) (emphasis added); RCW 26.19.080(3). The term "past due" in RCW 4.16.020(3) refers to an amount that is "overdue" or is "unpaid after the proper or assigned time of payment." *See Webster's Third New International Dictionary of the English Language* 1607, 1652 (1993). In contrast, the term "overpayment" in

RCW 26.19.080(3) refers to “payment in excess of what is due.” *Webster’s* at 1609. The two terms are at opposite ends of the payment spectrum: “past due” means *not paying* an amount that *is* owed, and “overpayment” means *paying* an amount that *is not* owed. Neither term encompasses the other. An examination of the wording in both statutes shows that the time limit for collecting past due child support does not apply to Mr. Blackburn’s separate action to recoup daycare overpayments. Because no child support was due under the support order from Ms. Goodyear-Blackburn to Mr. Blackburn, Mr. Blackburn cannot bring “an action to collect past due child support.” *See* RCW 4.16.020(3).

3. The ten-year statute of limitations in RCW 4.16.020(2) that applies to judgments and decrees does not apply to daycare overpayment actions

Contrary to Mr. Blackburn’s argument, the ten-year statute of limitations in RCW 4.16.020(2) for enforcing judgments and decrees does not apply to commencing a daycare overpayment action. Mr. Blackburn is not enforcing a final judgment; instead his action seeks to establish that he overpaid daycare, and to thereby *obtain* a judgment.

The ten-year limitation provision provides in pertinent part as follows:

The period prescribed for the commencement of actions shall be as follows: . . . Within ten years: . . . (2) For an action upon a judgment

or decree of any court . . . unless the period is extended under RCW 6.17.020 or a similar provision in another jurisdiction.

RCW 4.16.020 (source formatting omitted). This statute sets the time limit for enforcing pre-existing judgments. 28 Marjorie Dick Rombauer, *Washington Practice: Creditor's Remedies-Debtor's Relief* § 7.8 n.8 (2018). It does not address ancillary actions, such as Mr. Blackburn's present action to establish a daycare overpayment and obtain reimbursement.

The operative phrase in RCW 4.16.020(2) is “upon a judgment or decree.” The terms “judgment” and “decree” both refer to the court’s final determination of the rights and obligations of the parties in a case, or any order from which an appeal lies. *See, e.g., Judgment, Black's Law Dictionary* (11th ed. 2019), *available at Westlaw*⁷; *see also State v. Morgan*, 107 Wn. App. 153, 157, 26 P.3d 965 (2001) (describing RCW 4.16.020(2) as the general 10-year statute of limitations on actions upon a judgment).⁸

Without exception, every court that has construed RCW 4.16.020

⁷ Judgment and decree are similar terms. “Decree” is the traditional term in a court of equity, admiralty, divorce, or probate; “judgment” is the traditional term in a court of law. Decree, *Black's Law Dictionary* (11th ed. 2019), *available at Westlaw*.

⁸ This plain meaning construction is supported by legislative bill reports that acknowledge that the provision applies to the enforcement of existing judgments. E.g., Final Bill Report on SSB 6045, 53rd Leg., Reg. Sess. (Wash. 1994); Final Bill Report on E2SSB 5827, 57th Leg., Reg. Sess. (Wash. 2002).

has done so only in situations where the enforcement of a pre-existing judgment was at issue. *See, e.g., Stokes v. Polley*, 145 Wn.2d 341, 351, 37 P.3d 1211 (2001) (addressing an action to enforce monetary judgment nineteen years after dissolution); *State of Idaho v. Holjeson*, 42 Wn. App. 69, 73, 708 P.2d 661 (1985) (addressing an action to enforce a foreign judgment); *In re Marriage of Effert*, 45 Wn. App. 12, 17, 723 P.2d 541 (1986) (addressing an action to enforce a foreign judgment).

In this case, Mr. Blackburn is not seeking to enforce a judgment or decree. No judgment or decree awards him overpaid daycare expenses. Instead, he is asserting a claim for overpaid daycare under RCW 26.19.080(3). This is fundamentally distinct from “an action upon a judgment or decree.” RCW 4.16.020.

Mr. Blackburn has not cited any cases where the statute of limitations in RCW 4.16.020(2) was applied to commencing an action to *obtain* (as opposed to *enforce*) a final judgment. DSHS is not aware of any cases, published or unpublished, that do so.

Mr. Blackburn’s daycare reimbursement claim does not fit within the parameters of RCW 4.16.020(2) because he seeks to obtain a judgment rather than enforce one. Although an administrative order sets the monthly amount Mr. Blackburn owes for daycare each month, Mr. Blackburn needed to initiate a separate action to establish a daycare overpayment to obtain a

judgment. Because Mr. Blackburn's present action is separate from his child support order, the ten-year statute of limitations in RCW 4.16.020(2), which controls the enforcement of final judgments, does not apply.

C. The Child Support Schedule Prioritizes the Best Interests of Children, and RCW 26.19.080(3) Should Be Construed Consistently with This Overarching Objective

Following the plain meaning of the statutes of limitations also advances the goals and objectives of the child support schedule. *See Oliver v. Harborview Med. Ctr.*, 94 Wn.2d 559, 565, 618 P.2d 76 (1980) (noting that a legislative declaration of policy "serve[s] as an important guide in determining the intended effect of the operative sections" (*quoting Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 128, 580 P.2d 246 (1978))). Mr. Blackburn's proposed interpretation of RCW 4.16.020 would frustrate those goals and policies.

Contrary to the assertion of the Goodyear-Blackburn estate, when a parent is ordered to pay a portion of daycare expenses, that obligation is part of the parent's child support obligation. Opening Brief of Appellant at 15-17. Daycare is expressly included as part of the parental child support obligation in the schedule and has its own line on the mandatory worksheet used to calculate the obligation. RCW 26.19.080(3); RCW 26.19.011(10); CP at 18. The Court has previously ruled that a daycare obligation is appropriate when daycare is reasonable and necessary since this

construction is consistent with the overall purpose of other child support statutes. *In re Marriage of Mattson*, 95 Wn. App. 592, 599, 976 P.2d 157 (1999). Although a daycare obligation is not included within a “basic child support obligation,” it is still child support. RCW 26.19.011(1); RCW 26.19.080(3). It funds direct care of a child by a third party when this is reasonable and necessary.

The overriding purpose of the child support schedule is to prioritize the best interests of children by insuring that children are protected with adequate, equitable and predictable child support. RCW 26.19.001; *In re Marriage of Oakes*, 71 Wn. App. 646, 650, 861 P.2d 1065 (1993). The child support schedule is also intended to prevent a harmful reduction in a child’s standard of living when they do not live with both parents. *Mattson*, 95 Wn. App. at 600.

Mr. Blackburn’s proposed statute of limitations is contrary to the goals and objectives of child support statutes for two reasons. First, a longer statute of limitations is more likely to produce large judgments, and this will increase the potential for some children to receive no support in subsequent years. *See* RCW 26.19.080(3) (permitting overpayments to be offset against future support payments once any arrearages are satisfied).

Here, where Mr. Blackburn obtained a \$44,300 judgment and owed no arrears, the custodial parent would receive no child support for an entire

year, and perhaps longer, but for the fact that Ms. Goodyear-Blackburn has other assets that are available to offset the judgment. Many other families will not be so fortunate and could face dire financial consequences. Mr. Blackburn seeks to minimize this concern by explaining that he assumed custody of his child after Ms. Goodyear-Blackburn passed away, and any amount he recoups will help rather than hurt his child. Response Brief of Respondent at 22-23. This, however, is not the usual scenario. It will be more common for custody to remain unchanged, and for support intended to meet the current needs of the child becoming unavailable for that purpose.

Second, a ten-year or longer time limit will significantly increase the likelihood that paying parents will be able to recoup daycare payments that were legitimately used by the receiving parent to pay for daycare. Receiving parents will have great difficulty securing proof of the amount they paid for daycare due to the passage of time. Bank records, receipts, and other evidence may be unavailable when a receiving parent belatedly learns that payments received years ago, without complaint, are in dispute.

The two-year limit also adequately protects the paying parent's statutory right under RCW 26.19.080(3) to recoup a daycare overpayment. Although the time limit for enforcing past due child support, including daycare, is much longer than two years, the two-year statute of limitations

is triggered by overpayment—not the day the payment is due. *See Mayer v. City of Seattle*, 102 Wn. App. 66, 75, 10 P.3d 408 (2000) (holding injury does not accrue until it is actionable and appreciable). This provides even a late-paying parent with an opportunity to seek recoupment.

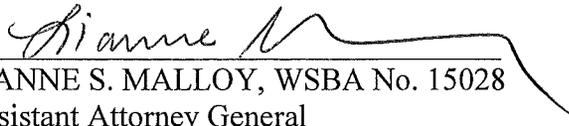
The two-year limit appropriately balances the paying parent’s right to recoup overpaid daycare against the necessity of protecting the receiving parent from stale claims. Paying parents have an opportunity to recoup overpayments, but not to surprise receiving parents many years later, when witnesses and other documentary evidence are no longer available.

VII. CONCLUSION

This Court should reverse the superior court order because it applied the wrong statute of limitations. The catchall two-year statute of limitations codified at RCW 4.16.130 controls.

RESPECTFULLY SUBMITTED this 27 day of September, 2019.

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PROOF OF SERVICE

I certify that I served a copy of the Department of Social and Health Services's Amicus Curiae Brief on all parties or their counsel of record on the date below as follows:

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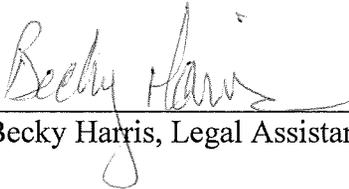
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 22 day of September, 2019, at Tumwater,
Washington.



Becky Harris, Legal Assistant

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

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