



STATE OF WISCONSIN
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

MSI/173205

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2016, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a telephonic hearing was held on May 12, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the petitioner’s Wisconsin State Supplemental Security Income (SSI) was correctly discontinued because his federal Title XVI SSI cash benefits ended.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] (written submission)

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Washington County.
2. The Petitioner received Federal and State SSI. The Federal SSI ended. The State SSI unit indicates the Petitioner was placed in nonpayment by the Federal SSI program retroactive to February 2016. The Federal SSI determined that petitioner was placed in non-payment status code of N01 (Recipient’s countable income exceeds Title XVI FBR).

3. The State SSI office terminated Petitioner’s State SSI because he no longer receives Federal SSI.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its State Supplemental SSI payments separately from Federal SSI payments (they had previously been sent out as one check by the Social Security Administration). The Petitioner was eligible for State Supplemental SSI because he received a Federal SSI payment. The statute reads, with the basis for Petitioner's eligibility italicized, as follows:

49.77 State supplemental payments.

...

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

...

2. *Any needy person or couple residing in this state and receiving benefits under federal Title XVI.*

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section, if at least one of the following requirements are met:

a. The person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.

4. Any essential person.

Wis. Stats. §49.77(2).

The Petitioner received State Supplemental SSI because he was receiving Federal SSI (Title XVI). Because his Federal SSI has been terminated (a fact that the State cannot change), he cannot qualify for State Supplemental SSI pursuant to §49.177(2)(a)2 above. He does not qualify under any of the other provisions listed and I must, therefore, conclude that he is not eligible for the State Supplemental SSI until he again receives Federal SSI payments.

At hearing Petitioner’s mother indicated she had appealed the Federal SSI determination and a hearing was set for May 25, 2016. If his appeal of the federal determination results in his eligibility for Federal SSI, the State SSI office will receive that information and benefits should be reinstated at the state level as well.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The State SSI office correctly terminated the Petitioner’s State SSI supplement because his Federal SSI was terminated.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of May, 2016

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 27, 2016.

Division of Health Care Access and Accountability
State SSI