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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

SSO/144008

PRELIMINARY RECITALS

Pursuant to a petition filed September 18, 2012, 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, a hearing was held on November 28, 2012, at Eau Claire, Wisconsin. A hearing scheduled for October 24, 2012, was rescheduled at the petitioner's request. The record was left open for seven days at the petitioner's request.

The issue for determination is whether the Department can recover an alleged overpayment of State Social Security payments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Attorney Mary Beth Gardner
2411 N. Hillcrest Parkway
Suite 9
Altoona, WI 54720

Respondent:

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

By: No Appearance

Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.

2. The Department began recovering an alleged overpayment of State SSI payments from the petitioner in September 2012.
3. The petitioner has been eligible for federal SSI during the entire period for which the Department seeks to recover payments.

DISCUSSION

Wisconsin law allows the Department of Health Services to recover any incorrectly paid benefits within a year of when the incorrect payment was discovered. It does not matter whose fault caused the incorrect payment. Wis. Admin. Code, § DHS 2.04(1)(a). Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Admin. Code § DHS 2.04(3). “Incorrectly paid benefits” means that the recipient was not eligible for the benefits during the period they were paid. Wis. Admin. Code § DHS 2.03(5). The petitioner was eligible for state SSI benefits only if she met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2).

The Department seeks to recover SSI payment made to the petitioner. There is no way to determine exactly what the Department seeks to recover or why it is doing so because it submitted no statement explaining its position and did not appear at the hearing; its only documentation was a chart of the benefits the petitioner has received since June 2012. I assume that the overpayment was based upon an earlier finding by Social Security Administration that the petitioner was ineligible for federal benefits from December 2010 through April 2012. That agency has since determined that she was entitled to benefits during this period and is waiving any overpayment. Because the Department has provided inadequate evidence to support its position and the Social Security Administration has determined that its underlying federal claim is incorrect, I will order the Department to end its attempts to recover any benefits she has received since December 2010 and repay any benefits it has recouped.

CONCLUSIONS OF LAW

The State SSI Unit has not established that the petitioner was overpaid any State SSI benefits since December 2010 and it is not entitled to any benefits it has recouped that were provided during that period.

NOW, THEREFORE, it is

ORDERED

That this matter is remanded to the Department of Health Services with instructions that within 10 days of the date of this decision it end all attempts to recover any State SSI payments made to the petitioner since December 2010 and that it take all steps necessary to ensure that she is repaid any benefits that have been recovered from her since August 2012.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of December, 2012

\sMichael D. O'Brien
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 December 19, 2012.

Division of Health Care Access And Accountability
State SSI
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