



FH

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

In the Matter of

[REDACTED]

DECISION

SSO/144914

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2012, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access And Accountability to recover State Supplemental Security Income (SSI), a hearing was held on December 4, 2012, by telephone.

The issue for determination is whether the state SSI Unit may recover a state SSI overpayment.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Jefferson County.
2. Petitioner receives federal and state SSI. In 2012 the Social Security Administration (SSA) informed petitioner that she was ineligible for federal SSI December, 2011 because her resources were too high.
2. By a notice dated September 20, 2012, the state SSI Office informed petitioner that she was overpaid \$179.77 in state SSI in December, 2012 because the SSA determined that she was ineligible in that month.

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 SSA), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that were done by the SSA for the federal SSI. One such function is the recovery of state SSI overpayments. When the state seeks to recover an overpayment, it must inform the recipient or former recipient of the action, and give that person the right to appeal the decision.

Wis. Admin. Code, §DHS 2.04(3) allows for the department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrectly paid benefits including state SSI, regardless of fault. "Incorrectly paid benefits" means payments in an amount in excess of what the person was eligible to receive during the period in which the payments were made. Admin. Code, §DHS 2.03(5).

Petitioner was and is eligible for state SSI because she is a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. Because the SSA determined that she was ineligible for federal SSI in December, 2011, it follows that she also was ineligible for state SSI during that period. Thus the state has determined correctly that petitioner was overpaid state SSI in December, 2011.

The SSA determined that petitioner was ineligible due to promissory notes in her name. Petitioner asked that I made a finding that the promissory notes were appropriate under SSI rules. I have no authority to make such a ruling, however. I can rule only on petitioner's state SSI eligibility, and since that rests solely on her federal SSI eligibility, I am bound to conclude that petitioner was ineligible for state SSI in December, 2011 because the SSA determined that she was ineligible for federal SSI.

If petitioner succeeds in having the federal action reversed, the state overpayment also will be reversed and any money collected will be repaid.

CONCLUSIONS OF LAW

The agency correctly sought to recover state SSI from December, 2011 because the federal SSA determined that petitioner was ineligible for federal SSI in that month.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 7th day of December, 2012

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 7, 2012.

Division of Health Care Access And Accountability
State SSI