



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

SSO/144374

PRELIMINARY RECITALS

Pursuant to a petition filed October 08, 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 October 31, 2012, at Wausau, Wisconsin.

The issue for determination is whether the Wisconsin Department of Health Services correctly seeks recovery of overpaid State Supplemental SSI benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
(with advocate [REDACTED])
[REDACTED]

Respondent:

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

By: Melissa Sherry (in writing)

Division of Health Care Access And Accountability
PO Box 6680
Madison, WI 53716-0680

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner was ineligible for federal SSI from January 2012 to May 2012.

3. During that time, petitioner was paid state supplemental security income in the amount of \$898.85.

DISCUSSION

In order to receive the SSI State Supplement, most persons must also be eligible to receive federal SSI through the Social Security Administration (SSA). Some states issue supplemental payments to SSI recipients living within their states, while others choose not to do so. Wisconsin is a state that has chosen to issue a monthly supplemental payment to Wisconsin residents who receive federal SSI. However, a condition of receiving this payment is that the person must be eligible to receive federal SSI (Title XVI):

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.*

...

(*emphasis added*)

Wis. Stat. §49.77(2)2.

The SSA has informed the State that the petitioner was not eligible for SSI, due to excess assets, from February through May, 2009. The petitioner acknowledges that he received an inheritance that rendered him asset-ineligible for federal SSI for all of the months in question here. It is undisputed that Wisconsin continued to pay benefits to the petitioner for the months in question. As there is no dispute that the petitioner received the state benefit during this timeframe, I must conclude that he was overpaid in these months.

Wisconsin law requires the Department to seek recovery of many types of incorrectly paid state benefits. This includes State SSI Supplement benefits. See Wis. Admin. Code § DHS 2.03(3) (December 2008). "Incorrectly paid benefits" means payments of any amount dispersed to an individual who was not eligible for any benefit amount during the period for which the payment was made or in an amount which was in excess of the amount for which the person was eligible during the period for which the payment was made." See Wis. Admin. Code § DHS 2.03(5). Thus, Wisconsin law mandates that all incorrectly paid benefits must be recovered per Wis. Admin Code § DHS 2.04. That is true of current recipients and former recipients.

An individual's monthly State SSI payment may be reduced for the purpose of recovering a State SSI overpayment. See Wis. Admin. Code § DHS 2.04(5). Current recipients will have their state grant reduced by no more than 10% until the full amount of the incorrect payment is recovered by the Department, unless the individual requests a larger percentage deduction. If the individual is ineligible for SSI, s/he can make arrangements for repayment.

Petitioner concedes that from January 2012 to May 2012 he had excessive assets because he was saving for a car. He agrees that he was not eligible for federal SSI. He was therefore not eligible to receive the state supplement. Essentially, based on the record from the hearing, petitioner was hoping that I could reduce the amount to be recovered simply based on an explanation of why petitioner made the error he did making him ineligible. I have no such authority.

CONCLUSIONS OF LAW

The Department did not err in determining that the \$898.85 must be recouped.

THEREFORE, it is

ORDERED

That this appeal is 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 17th day of January, 2013

\sJohn P. Tedesco
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 January 17, 2013.

Division of Health Care Access And Accountability
State SSI