



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

SSP/145321

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 14, 2012, under Wis. Admin. Code, §HA 3.03, to review a decision by the Division of Health Care Access And Accountability (DHCAA) in regard to State Supplemental SSI benefits, a hearing was held on January 3, 2013, by telephone.

The issue for determination is whether the State SSI Office can collect an overpayment when petitioner is appealing the Social Security Administration's determination.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

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

By: Melissa Sherry, State SSI Analyst

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner has been a federal and state SSI recipient. In the summer, 2012, the Social Security Administration (SSA) notified petitioner that her federal SSI would be terminated, and that she was ineligible retroactive to August, 2011. Petitioner appealed the SSA determination and the SSA continued petitioner's current SSI during the appeal. Because the current SSI was continued, the state continued petitioner's state SSI supplement.

3. On October 26, 2012, the State SSI Office sent petitioner a notice informing her that it intended to recover an overpayment for the backdated ineligibility period (August, 2011 through June, 2012). The state began to recoup the overpayment by reducing petitioner's state SSI by \$8.38 beginning December 1, 2012.

### **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.

Importantly, §DHS 2.04 does not require the state agency to stay the collection of benefits while a person appeals a determination of ineligibility made by the SSA. I must conclude, therefore, that the State SSI Office was able to begin recoupment of the overpaid benefits even though petitioner appealed the SSA action and current benefits continue under the appeal.

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

### **CONCLUSIONS OF LAW**

The state SSI Office correctly began to recover a state SSI overpayment even though petitioner appealed the ineligibility determination to the SSA.

**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 8th day of January, 2013

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\sBrian C. Schneider  
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 January 8, 2013.

Division of Health Care Access And Accountability  
State SSI