



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

SSP/145634

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 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 (Division or DHCAA) in regard to State Supplemental SSI benefits, a hearing was held on January 10, 2013, at Elkhorn, Wisconsin.

The issue for determination is whether the petitioner is entitled to payment of State Supplemental SSI benefits from April 1, 2001, to the present.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: No appearance
State SSI Unit
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner, age 29, is a resident of Walworth County.

2. The petitioner has received a federal SSI payment continuously from April 2001 to the present, due to a developmental disability. She has also been on SSI-related Medicaid from April 2001 to the present.
3. The petitioner has received no State Supplemental SSI payments from April 2001 to the present.
4. The petitioner asked Melissa Sherry at HP Enterprises/Wisconsin Medicaid to start State Supplemental SSI payment for the petitioner, and to issue retroactive benefits to the petitioner, in September 2012. None of the requested payments had been issued by the date of hearing, and no denial of payment was made. The petitioner filed the instant appeal in an effort to get some action taken on her case.

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). Based on the pertinent statutory language, I conclude that the petitioner is eligible for State Supplemental SSI because she has been and is currently “receiving benefits” under federal Title XVI:

49.77 State supplemental payments.

...

(2) **Eligibility.** 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:

1. Any needy person or couple residing in this state who, as of December 31, 1973, was receiving benefits under s.49.18 , ...
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.

(emphasis added)

Wis. Stat. § 49.77(2).

The petitioner’s eligibility for a monthly State Supplemental SSI payment is not in doubt. The remaining question for the Administrative Law Judge is a jurisdictional one – do I have authority to grant relief for a time period exceeding 45 days retroactively from the November 30, 2012 hearing request?

The jurisdictional authority at Wis. Admin. Code § HA 3 states as follows:

HA 3.03 Right to appeal. (1) Any person applying for or receiving Medicaid, .. or public assistance may appeal any of the following administrative actions of the department or an agency:

- (a) Denial of an application for benefits ... [there was no application document here].
- (b) ...

(4) an applicant, recipient or former recipient may appeal any other adverse action or decision by an agency or department which affects their public assistance or social services benefits where a hearing is required by state or federal law or department policy.

HA 3.05 Request for a hearing. (1) An applicant or recipient who wishes to contest an action specified under s. HA 3.03 may request a hearing.

...

(3) Except as provided in par. (a) or (b), the petitioner shall have 45 days from the effective date of the adverse action specified under s. HA 3.03 in which to file a hearing request.

(a) For a hearing request relating to food stamps, the petitioner has 90 days ...

(b) If a different time limit for a hearing request is specified by state statute, administrative rule or federal regulation, that limit shall apply and shall be stated in the notification of Right to Appeal in the decision.

...

(4) The division shall deny or dismiss a hearing request under any of the following circumstances:

(a) The division does not have jurisdiction to conduct a hearing on the matter appealed.

...

Wis. Admin. Code §§ HA 3.03 & 3.05.

“Applicant” is not a defined term in the above rule. The statute authorizing the State Supplemental SSI benefit, §49.77, does not specify a “different time limit for a hearing request.” This office has traditionally applied the 45-day limit to this type of case. Therefore, my jurisdictional authority is limited to the 45 days preceding the November 30, 2012 hearing request (*i.e.*, mid-October 2012). The State Supplemental SSI benefits go out in the first week of the month, <http://www.dhs.wisconsin.gov/ssi/benefits.htm>. This means that my order is limited to benefits that should have been issued from November 1, 2012, forward. I will order issuance of the benefit from November 2012 forward. My order does not preclude the Department from issuing more distant retroactive benefits to the petitioner.

CONCLUSIONS OF LAW

1. The petitioner is entitled to State Supplemental SSI benefits from at least November 1, 2012, through the present time.
2. This Administrative Law Judge lacks jurisdiction to order retroactive benefits for a period greater than 45 days, based on an “agency inaction” jurisdictional theory.

THEREFORE, it is

ORDERED

That the Department shall issue a monthly State Supplemental SSI benefit to the petitioner from November 2012, through the present month. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition 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 23rd day of February, 2013

\sNancy J. Gagnon
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 February 25, 2013.

Division of Health Care Access And Accountability
State SSI
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