



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

SSO/146385

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2013, 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 State SSI benefits, a telephonic hearing was held on January 31, 2013, at Appleton, Wisconsin. At the request of Attorney Fitzpatrick, the record was held open for one month for Mr. Fitzpatrick to submit a brief to the Division of Hearings and Appeals (DHA) by February 13, 2013, and then for the Department to submit a responsive brief to DHA by February 27, 2013. Attorney Fitzpatrick failed to submit any brief to DHA by February 13, 2013 or even by the date of this decision.

The issue for determination is whether the Department is correctly seeking recovery from the petitioner of a State SSI overpayment of \$81,003.96 from the period of September, 2010 through August, 2011.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Michael Fitzpatrick  
Disability Help Group, LLC  
PO Box 170888  
Milwaukee, WI 53217

Respondent:

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

By: Melissa Sherry, State SSI analyst, written submission  
Division of Health Care Access And Accountability  
State SSI Unit  
P.O. Box 6680  
Madison, WI 53716-0680

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.
2. The petitioner received State SSI benefits during the period of September, 2010 through August, 2011.
3. During August, 2011, the Department discovered that the petitioner had received excessive State SSI benefits, and contacted the petitioner on August 12, 2011. See Exhibit 1.
4. The Department sent a November 20, 2011 State SSI Overpayment Notice to the petitioner stating that she had received a State SSI overpayment of \$81,003.96 during the 12 month retroactive time period from the date of discovery (September, 2010 through August, 2011). That notice explained that due to administrative error, the petitioner was paid State SSI at an incorrect and excessive monthly payment rate. Instead of receiving \$83.78 per month, petitioner received \$6,834.11 for each month during the 12 month overpayment period. See Exhibit 2.
5. The petitioner admitted receiving the \$81,003.96 in State SSI benefits during the period in question. Exhibit 2 details the calculation of the State SSI overpayment of \$81,003.96.
6. During the January 31, 2013 hearing, the record was held open for Attorney Fitzpatrick to submit a brief to DHA with possible affidavit/exhibit(s) to establish the legal and factual basis to support the request to reduce or waive the petitioner's State SSI overpayment. Mr. Fitzpatrick failed to timely submit any brief or any other communication to DHA. See above Preliminary Recitals.

### DISCUSSION

Wisconsin law requires the Department of Health Services to recover any overpayments of assistance, regardless of fault. Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Adm. Code § DHS 79.40. "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Adm. Code § DHS 79.30(2). The petitioner was eligible for state SSI benefits only if petitioner met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2). This means that petitioner must have properly received federal SSI to receive state SSI. See Wis. Stat. § 49.77(2)(a)2; See also 20 C.F.R. §416.2025(b)(4).

During the January 31, 2013 hearing, the record was held open for Attorney Fitzpatrick to submit a brief to DHA with possible affidavit/exhibit to establish the legal and factual basis to support the request to reduce or waive the petitioner's State SSI overpayment. Mr. Fitzpatrick failed to timely submit any brief to DHA. See above Preliminary Recitals. On the other hand, State SSI analyst Melissa Sherry, sent a January 17, 2013 letter to DHA and Mr. Fitzpatrick stating in pertinent part:

The member was contacted by phone by our fiscal agent on August 12, 2011 and informed of the discovery of the overpayment by the fiscal agent and the State. On that call, the member admitted being aware that she was being paid excessive benefit payments and also admitted affirmatively choosing not to report her overpayment to the State or our fiscal agent. The member went on to indicate that she had spent the entire amount of the overpayments on various personal expenses and effects and did not have any of the funds remaining to repay the State. See Exhibit 1.

During the hearing or while the record was held open, neither the petitioner nor her attorney presented any reliable testimony or evidence to convincingly refute the above quote from Ms. Sherry. The petitioner admitted receiving the \$81,003.96 in State SSI benefits during the period in question. Accordingly, based upon the above, I conclude that the Department is correctly seeking recovery from the

petitioner of a State SSI overpayment of \$81,003.96 from the period of September, 2010 through August, 2011.

**CONCLUSIONS OF LAW**

The Department is correctly seeking recovery from the petitioner of a State SSI overpayment of \$81,003.96 from the period of September, 2010 through August, 2011.

**THEREFORE, it is ORDERED**

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 3rd day of June, 2013

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\sGary M. Wolkstein  
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 June 3, 2013.

Division of Health Care Access And Accountability  
State SSI  
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