



FH

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

In the Matter of

██████████
██████████
██████████
██████████

DECISION

CTO/147138

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2013, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access And Accountability in regard to Caretaker Supplement (CTS) benefits, a telephonic hearing was held on February 27, 2013, at Madison, Wisconsin.

The issue for determination is whether there is sufficient reliable evidence in the hearing record to determine whether the Department is correctly and accurately continuing to seek recovery of the caretaker supplement overpayment against the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

Respondent:

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

By: Melissa Sherry, State SSI analyst
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 is a resident of Dane County who is diagnosed with pancreatic cancer.
2. The petitioner received federal SSI and Caretaker Supplement (CTS) benefits.
3. There is no information in the hearing record confirming when petitioner began receiving federal Supplemental Security Income (SSI) from the Social Security Administration (SSA).
4. Based upon a brief hearsay e mail letter from the Department, State SSI analyst Melissa Sherry alleged, without any notice or documentation, that the petitioner is allegedly “subject to an SSI overpayment recoupment related to CTS only benefits. Overpayment was established 3/13/2006 totaling \$1,500.00 for which we’ve been withholding 10% of the gross monthly SSI payment issued.” See Exhibit 1.
5. Neither the Department nor the petitioner provided any copy of the relevant Caretaker Supplement (CTS) overpayment notice.
6. Neither the Department nor the petitioner provided any documentation to establish with any reliable evidence the initial CTS overpayment amount, the amount of CTS recouped, or the remaining amount of the petitioner’s CTS overpayment as of the February 27, 2013 hearing date.
7. The State SSI program did not send any summary or documentation of the relevant Caretaker Supplement overpayment action against the petitioner to the Division of Hearings and Appeals (DHA) regarding petitioner’s ongoing Caretaker Supplement overpayment.
8. No State SSI representative appeared at the hearing to provide testimony or to answer any questions regarding the Caretaker Supplement overpayment action against the petitioner.

DISCUSSION

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, AFDC ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays SSI recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stats. §49.775.

To be eligible for the CTS payments the following criteria must be met: **(1)** the caretaker must be an SSI recipient, or if both parents are in the home, both parents must receive SSI; **(2)** the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and **(3)** the child or children must not receive SSI payments themselves. Wis. Stats. §49.775(2).

During the February 27, 2013 hearing, petitioner alleged that that the State SSI unit continues to recoup from her Caretaker Supplement benefits, but was unable to provide any copy of the CTS overpayment notice or any other reliable evidence regarding the overpayment. The petitioner also complained that she has attempted to obtain some answers from the State SSI unit, but was unable to receive any answers to her questions. She requested a hearing because she was unable to confirm whether her overpayment has been repaid or documentation of the remaining amount of her CTS overpayment.

Because the Department did not submit a summary, any overpayment notice or any other evidence, there is simply insufficient reliable evidence in the hearing record to determine whether the petitioner has fully repaid her CTS overpayment or to confirm with documentation the remaining balance of petitioner’s

CTS overpayment. Accordingly, based upon the above, this case is remanded to DHS to investigate this case and issue a new detailed notice to petitioner regarding the status of petitioner's alleged Caretaker Supplement overpayment. If the petitioner disagrees with that new overpayment notice, she must timely file a new appeal at DHA to review that new CTS overpayment notice.

CONCLUSIONS OF LAW

There is insufficient reliable evidence in the hearing record to determine whether the Department is correctly and accurately continuing to seek recovery of the caretaker supplement overpayment against the petitioner, and whether the petitioner must repay any remaining amount of her Caretaker Supplement overpayment.

THEREFORE, it is

ORDERED

The matter is remanded to DHS (**Attention: State SSI Supervisor**) with instructions to: a) investigate this case regarding the status of petitioner's alleged Caretaker Supplement overpayment; b) if there is an error and petitioner owes no remaining repayment of her Caretaker Supplement overpayment or if there is a remaining overpayment balance, the Department should send a new detailed overpayment notice to the petitioner confirming that status, within 10 days of the date of this Decision.

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

\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