



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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████████████████████

DECISION

SSP/147589

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 21, 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 (DHCAA) in regard to State Supplemental SSI benefits, a telephonic hearing was held on May 22, 2013, at Milwaukee, Wisconsin. At the request of petitioner, a hearing set for April 10, 2013 was rescheduled.

The issue for determination is whether the Department correctly sought to discontinue the petitioner's State Supplemental SSI payments effective February 18, 2013.

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 Supplemental Security Income 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 Milwaukee County.
2. The Department of Health Care Access and Accountability (DHCAA) sent a February 18, 2013 notice to the petitioner that her State SSI would discontinue due to her Federal SSI ending as of December 22, 2012.
3. The petitioner timely appealed her State SSI discontinuance.
4. State SSI analyst Melissa Sherry sent a March 29, 2013 letter to the Division of Hearings and Appeals (DHA) indicating that the Department received an update from the Social Security Administration (SSA), and that the Department was reversing its position and confirming that petitioner’s State SSI would resume as of February 18, 2013 because petitioner continues to be eligible for Federal SSI. That notice also indicated that petitioner’s Medicaid eligibility also resumed as of February 18, 2013. See Exhibit 1.

**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). The state statute that lists the eligibility criteria for State Supplemental SSI payments reads as follows:

**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.
3. Any needy person or couple residing in this state whose income ... 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.

Wis. Stat. § 49.77(2). The State sought discontinuance of the petitioner’s State Supplemental benefit because it believed that petitioner did not meet the financial or non-financial eligibility requirements of the federal SSI (*i.e.*, Title XVI) program as of February 18, 2013, based on earlier information provided by the SSA.

However, if the petitioner is financially and non-financially eligible for federal SSI, she is also financially and non-financially eligible for State Supplemental SSI. During the May 22, 2013 hearing, this ALJ explained to the petitioner and her husband the receipt of Ms. Sherry's March 29, 2013 letter, and that such letter confirmed petitioner's continuing eligibility for State SSI and MA. Accordingly, based upon the above, I conclude that the Department must restore petitioner's State Supplemental SSI case retroactive to February 18, 2013 because petitioner was eligible for federal SSI benefits during that period.

### **CONCLUSIONS OF LAW**

1. The Department incorrectly discontinued the petitioner's State Supplemental SSI payments as of February 18, 2013 only because it believed that the petitioner was not eligible for federal SSI as of that date.
2. The Department must restore petitioner's State Supplemental SSI case retroactive to February 18, 2013 because petitioner was eligible for receipt of federal SSI as of February 18, 2013.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the State SSI Unit with instructions to issue State Supplemental SSI benefits to the petitioner retroactive to February 18, 2013 (if not already issued to petitioner), 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 21st 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 21, 2013.

Division of Health Care Access And Accountability  
State SSI