



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

DECISION

SSO/150015

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Wisconsin Department of Health Services, by the Division of Health Care Access And Accountability, in regards to Stat SSI Supplement payments, a telephone hearing was held on July 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department has correctly determined that the petitioner was overpaid \$921.58 in State SSI Supplement payments during the period of July, 2008 – May, 2009, because he was incarcerated during that period and ineligible.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
c/o [Redacted]
[Redacted]
[Redacted]

Respondent:

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

Written Appearance By: Melissa Sherry, State SSI Analyst
Division of Health Care Access And Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Milwaukee County. He was receiving federal SSI and State SSI Supplement benefits in at least the period of July, 2008 – May, 2009.
2. The petitioner was incarcerated during the period of July, 2008 – May, 2009.

3. On May 23, 2013, the Department issued a Notice to the petitioner informing him that it had determined that he had been overpaid \$921.58 in State SSI Supplement benefits in the period of July, 2008 – June, 2009, because he was incarcerated and not eligible for the state benefit during that time period. The Notice also informed him that the Department would be withholding 10% of his State SSI Supplement benefit to recoup this overpayment, beginning on or about May 9, 2013.
4. On June 12, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the overpayment/recoupment action.

### **DISCUSSION**

Exhibit #1, with the attached SSI Enrollment screen, documents that the federal Social Security Administration determined the petitioner was coded “N22” for “inmate of a correctional institution” during the months of July, 2008 – May, 2009. See, Exhibit #1. The petitioner conceded that this was true. Accordingly, he was not eligible for federal SSI benefits in those months. In order to be eligible for State SSI Supplement benefits of \$83.78 per month, an individual must be concurrently eligible for federal cash SSI benefits. See, Wis. Stat. § 49.77(2). The petitioner was *not*, by virtue of his incarceration. The entire amount of state benefits paid to him in this 11 month period was correctly determined to be an overpayment and subject to recoupment. The state portion will be recouped going forward by the recovery of 10% of the State SSI Supplement benefit each month until the debt is re-paid. This is separate and distinct from any federal SSI overpayment, recovery, or waiver of overpayment. Those are issues that, if they come to pass, the petitioner must appeal to the federal SSI agency.

### **CONCLUSIONS OF LAW**

The petitioner was overpaid \$921.58 of State SSI Supplement payments in the period of July, 2008 – May, 2009, because he was incarcerated in that period and not eligible for federal benefits or State SSI Supplement benefits due to this status.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be, and the same hereby 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 22nd day of July, 2013

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\sKenneth D. Duren, Assistant Administrator  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Wayne J. Wiedenhoef, Acting Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 22, 2013.

Division of Health Care Access And Accountability  
State SSI