



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/150062

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 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 Medical Assistance, a hearing was held on July 15, 2013, at Appleton, Wisconsin.

The issue for determination is whether the Department met its burden to establish that petitioner is liable for a state SSI overpayment in the amount of \$921.58.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Melissa Sherry (in writing)
Division of Health Care Access And Accountability
1 West Wilson Street
Madison, Wisconsin 53703

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. The petitioner was receiving Wisconsin State SSI because of receipt of federal Supplemental Security Income (SSI) from the Social Security Administration (SSA).

3. According to petitioner, the State of Wisconsin sent a notice to the petitioner prior to her June 17 request for hearing which alleged that petitioner received a State SSI overpayment in the amount of \$921.58.
4. The State SSI program did not send a copy of the SSI overpayment notice to the Division of Hearings and Appeals (DHA) regarding petitioner's State SSI overpayment.
5. Melissa Sherry from the Department DHCAA sent a letter to DHA on June 24 that states that petitioner was placed in a "retroactive payment status of N01...for the month(s) of November 2011 through April 2012 as well as October 2012 through February 2013. The letter included an attachment with a field designated "SSI Enrollment," but no explanation of the attachment.

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).

Petitioner appeared at the hearing and denied that her social security payments have varied since 2011. Petitioner stated that she had no idea why she could have an overpayment and why there would be a claim that she her status with regard to social security payments changed. Petitioner stated that she has had no communication from the Social Security Administration regarding her eligibility for payments from the SSA.

As it usually the case in matters such as this, there was no actual appearance by the Department. Instead, what was sent is letter with only the most rudimentary of allegations and a printout of a computer screen that bears no explanation of its meaning or relevance. Furthermore, there is no way for me to gauge the reliability of such a printout, even if it were clear what it purported to prove. I am simply unable to ask the critical questions of a human being in such a circumstance. It is impossible for me to make a critical finding of fact relating to her social security status in this case. In many of these cases, the petitioner herself admits that there was a lapse in her social security eligibility. But, that is clearly not the case here.

If the Department expects to prevail in a case such as this where a credible petitioner (which petitioner was) directly disputes the claim of the Department that she was deemed ineligible for federal SSI, then the Department needs to do more. A telephone appearance would be helpful. A meaningful and thorough cover letter written for the specific case explaining the exhibits/attachments would be a wise practice. Some additional work that answers the questions "what did you send me and why should I rely on your paperwork rather than the credible petitioner?" is really critical. Again, in most cases, the petitioner inevitably concedes that the federal benefits stopped or that the federal government is seeking an overpayment as well. But that did not happen here.

There is simply insufficient reliable evidence in the hearing record to determine whether the petitioner must repay any overpayment of SSI State Supplement Payments. Accordingly, based upon the above, the Department failed to meet its burden of establishing such liability.

CONCLUSIONS OF LAW

There is insufficient reliable evidence in the hearing record to determine whether the petitioner must repay any overpayment of SSI State Supplement Payments. The Department failed to meet its burden.

THEREFORE, it is

ORDERED

The matter is remanded to DHS with instructions to reverse the finding of state SSI overpayment in the amount of \$921.58 and cease all collection efforts. If any funds have been recouped from petitioner in this matter those funds must be returned. These actions must be completed within 10 days.

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 19th day of September, 2013

\sJohn P. Tedesco
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 19, 2013.

Division of Health Care Access And Accountability
State SSI