



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTO/150063

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2013, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access And Accountability in regard to Caretaker Supplement benefits, a hearing was held on July 24, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner must repay an alleged caretaker supplement overpayment.

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
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Barron County.
2. The county agency alleges that the petitioner received \$1,901.34 more in Caretaker Supplement benefits than she was entitled to from July through September 2012 because her income exceeded the SSI limit.

3. The Department did not establish that the petitioner was ineligible for SSI July through September 2012.

DISCUSSION

The Department may recover incorrectly paid Caretaker Supplement payments. Wis. Admin. Code, § DHS 2.04; see also Wis. Stat., §49.775. “ ‘Incorrectly paid benefits’ means payments of any amounts disbursed to a person who was not eligible for any benefit during the period for which the benefit was paid.” Wis. Admin. Code, § DHS 2.03(5). The Department sent a form letter indicating that the petitioner received \$1,901.34 more in Caretaker Supplement benefits than she was entitled to from July through September 2012 because her income exceeded the SSI limit.

On January 1, 1998, Wisconsin Works (W-2) ended AFDC in Wisconsin. W-2 is a work program, but Supplemental Security Income (SSI) recipients by definition are unable to work, so SSI recipients cannot qualify for W-2. In order to aid those on SSI with the financial burden of raising children, the state, acting under Wis. Stat. § 49.775, implemented the Caretaker Supplement program. It pays \$250 per month for one child and \$150 per month for each additional child to parents who receive SSI. The Caretaker payments are included in the SSI State Supplement payments made to eligible recipients. To be eligible, the caretaker must, among other things, be an SSI “recipient.”

The Department presented no evidence of the petitioner’s actual income. The only evidence it presented that she was ineligible for the program was a Social Security Administration printout indicating that her status was N01, which it states means that the recipient’s income exceeds the SSI program’s limit. The petitioner contends that her income did not change during throughout the year and that she continued to receive SSI payments. There is no evidence that the Social Security Administration or state social security unit has attempted to recover any payments it made to the petitioner.

The Department has the burden of proving that the petitioner received an overpayment. To do so, it must show that she was not an SSI recipient. Neither its letter nor the printout is adequate. At the very least, those representing a party are expected to tailor the evidence to the particular situation at hand. A form letter that could easily have been generated in its entirety by a computer does not meet this standard. I find the petitioner’s evidence more compelling because she was subject to questions from the tribunal and appeared to be truthful. The preponderance of the credible evidence is that she remained an SSI recipient throughout this period and thus remained eligible for the Caretaker Supplement. Based upon this, I reverse the agency’s decision and will order it rescind the overpayment finding.

I note, moreover, that unlike FoodShare overpayment matters, the Department has discretion concerning whether to bring an action in Caretaker overpayment matters. To properly exercise its discretion it must do more than rely on a single sheet of paper from the Social Security Administration, which is all it appears to have done here, and conduct at least some review of the circumstances of the particular matter before it.

CONCLUSIONS OF LAW

The Department has not shown by the preponderance of credible evidence that the petitioner received an overpayment of Caretaker Supplement payments from July through September 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the State SSI Unit with instructions that within 10 days of the date of this decisions it take all steps necessary to rescind its finding that the petitioner received a Caretaker

Supplement overpayment from July through September 2012 and to cease trying to recover that alleged overpayment.

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 10th day of September, 2013

\sMichael D. O'Brien
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 September 10, 2013.

Division of Health Care Access And Accountability
State SSI