



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/150416

PRELIMINARY RECITALS

Pursuant to a petition filed June 28, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Division of Health Care Access And Accountability (DHCAA) to recover State Supplemental Security Income (SSI), a hearing was held on August 28, 2013, by telephone.

The issue for determination is whether petitioner was overpaid state SSI.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Written submission of Melissa Sherry

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Minnesota. He formerly resided in Rock County.
2. Petitioner received the Wisconsin state SSI supplement as well as federal SSI in late 2012. His residence changed effective January 1, 2013. The Social Security Administration later changed petitioner's state of residence to Minnesota retroactive to September, 2012.
3. On June 20, 2013, the Wisconsin state SSI office notified petitioner that he was overpaid \$264.12 in state SSI in the months of September through December, 2012.
4. Petitioner was a Wisconsin resident during the months of September through December, 2012.

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 SSA), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that were done by the SSA for the federal SSI. One such function is the recovery of state SSI overpayments. When the state seeks to recover an overpayment, it must inform the recipient or former recipient of the action, and give that person the right to appeal the decision.

Wis. Admin. Code, §DHS 2.04(3) allows for the department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrectly paid benefits including state SSI, regardless of fault. "Incorrectly paid benefits" means payments in an amount in excess of what the person was eligible to receive during the period in which the payments were made. Admin. Code, §DHS 2.03(5).

Petitioner was and is eligible for state SSI because he is a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. Because the SSA determined that he was a resident of Minnesota from September through December, 2012, the state determined that petitioner was ineligible for state SSI during that period.

Petitioner testified that he did not move to Minnesota until January, 2013. He has receipts from the [REDACTED] [REDACTED] in [REDACTED] through the end of November, and there are records that he picked up prescriptions in [REDACTED] in December when he was homeless. He speculates that the SSA changed his residence to Minnesota back to September because that was the date his wife reported moving back to Minnesota, but he testified further that he remained behind in Wisconsin after she moved initially in late August, 2012.

While normally I would tell a petitioner that the matter had to be resolved with the SSA, in this case there would be nothing for the SSA to resolve. It does not matter to the SSA which state petitioner lived in for four months in 2012; he was eligible for his federal SSI regardless of his state of residence. It would be unlikely that the SSA would bother to take the time to change petitioner's residence in late 2012 back to Wisconsin as there would be no practical reason for the SSA to do so. I thus will order the state SSI office to rescind the overpayment based upon my finding that petitioner continued to reside in Wisconsin through January, 2013.

CONCLUSIONS OF LAW

Petitioner was not overpaid state SSI from September through December, 2012 because he remained a Wisconsin resident during that period; the SSA record for that period is incorrect.

THEREFORE, it is

ORDERED

That the matter be remanded to the State SSI Unit with instructions to rescind its claim that petitioner was overpaid State SSI in the amount of \$264.12 from September through December, 2012, and to cease recovery of the claim. This agency shall take the action within 10 days 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

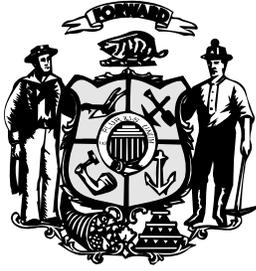
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 4th day of September, 2013

\sBrian C. Schneider
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 4, 2013.

Division of Health Care Access And Accountability
State SSI