



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/150572

PRELIMINARY RECITALS

Pursuant to a petition filed July 08, 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 August 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of State SSI benefits.

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

Division of Health Care Access And Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. For January, 2013, the Social Security Administration (SSA) placed the Petitioner in a retroactive pay status due to its finding that the Petitioner had unearned income over the SSI program limit.
3. The Petitioner was issued state SSI benefits for January, 2013 in the amount of \$177.00.

4. On April 15, 2013, the Petitioner filed a request for reconsideration with the SSA.
5. On June 20, 2013, the agency issued a Notice of State SSI and/or Caretaker Supplement Overpayment to the Petitioner informing her that the agency intends to recoup an overpayment of \$179.77 for an overpayment of benefits for January, 2013.
6. On July 8, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wisconsin law allows the Department of Health and Family Services to recover any incorrectly paid benefits within a year of when the incorrect payment was discovered. It does not matter whose fault caused the incorrect payment. Wis. Admin. Code, § DHS 2.04(1)(a). Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Admin. Code § DHS 2.04(3). “Incorrectly paid benefits” means that the recipient was not eligible for the benefits during the period they were paid. Wis. Admin. Code § DHS 2.03(5). The petitioner was eligible for state SSI benefits only if she met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2).

Because the SSA notified the Petitioner that she was not eligible for SSI benefits in January, 2013, the Petitioner also was not eligible for state SSI benefits for that month. Therefore, the state may recover any benefits for which the Petitioner was not eligible.

I note that the Petitioner filed a request for reconsideration with SSA regarding its determination on her January, 2013 benefits. If the SSA finds she was eligible for SSI benefits in January, 2013, then she would be eligible for state SSI benefits as well and the state will have to reverse its overpayment finding. I did attempt to contact the agency to determine if it could follow up with SSA and find out if that agency had received the Petitioner’s appeal information and materials supporting her position or whether the SSA had made a decision on the Petitioner’s appeal. I did not receive a return call or email. Therefore, based on the evidence that I do have at this time, I conclude that the agency may recover \$179.77 from the Petitioner unless SSA reverses its finding and determines the Petitioner was eligible for SSI benefits for January, 2013.

CONCLUSIONS OF LAW

The agency may recover \$179.77 for benefits from January, 2013 unless SSA reverses its finding and determines the Petitioner was eligible for SSI benefits for January, 2013.

THEREFORE, it is

ORDERED

That the petition be, and 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 Milwaukee,
Wisconsin, this 23rd day of October, 2013

\sDebra Bursinger
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 October 23, 2013.

Division of Health Care Access And Accountability
State SSI