FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

SSP/150963

PRELIMINARY RECITALS

Pursuant to a petition filed July 24, 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 ["DHS"] in regard to State Supplemental SSI benefits, a Hearing was held via telephone on November 19, 2013. At petitioner's request Hearings scheduled for November 14, 2013, October 17, 2013, and September 17, 2013 were rescheduled.

The issue for determination is whether it is correct to discontinue petitioner's State Supplemental Security Income ["SSI"] Supplement.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Melissa Sherry, State SSI Analyst [Ms. Sherry did not appear at the November 19, 2013 Hearing but submitted a letter dated July 31, 2013.]
Supplemental Security Income Unit
Division of Health Care Access And Accountability
Department of Health Services
State of Wisconsin
P.O. Box 6680
Madison, Wisconsin
53716-0680

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Brown County.
2. The Wisconsin Department of Health Services ["DHS"] discontinued petitioner's State SSI Supplement effective August 1, 2013 because it claims that she is not receiving federal SSI because she "has been placed in a non-payment status code of N01 (Member's countable income exceeds Title XVI FBR) for the time period August 2013 and continuing."

DISCUSSION

With certain exceptions not applicable here, a person must be receiving federal SSI in order to receive State SSI Supplement payments. Wis. Stat. § 49.77(2)(a)2. (2011-12). DHS states that petitioner is not receiving federal SSI because she "has been placed in a non-payment status code of N01 (Member's countable income exceeds Title XVI FBR) for the time period August 2013 and continuing." However, DHS has offered virtually no evidence to support this statement. There is in the record of this matter a computer print-out *SSI Payment History* which shows a "Payment Status" of N01 for 07/24/2013, 04/17/2103, and 10/24/2012 -- but it shows a "Payment Status" of C01 for 06/19/2013, 05/22/2013, 03/20/2013, 02/20/2013, 01/23/2013, 01/16/2013, and 11/21/2012. DHS presented no other evidence.

Petitioner, on the other hand, testified convincingly that she is still getting federal SSI and that her federal SSI was never cut-off. She produced copies of her bank statements to corroborate her testimony.

Clarification of this situation was sought from the State SSI Analyst by both petitioner and the Administrative Law Judge ["ALJ"]. Petitioner testified that she telephoned the State SSI Analyst the day before the Hearing and a total of 7 times over a 3 week period but was told that the State SSI Analyst does not accept calls from individuals. The ALJ telephoned the State SSI Analyst on November 14, 2013 and November 15, 2013 and left detailed messages but never received any response. The ALJ telephoned the State SSI Analyst 4 additional times but got a recorded message and did not leave a message.

This matter must be decided based on a preponderance of the credible evidence. Wis. Admin. Code § HA 3.09(4) (February 2013). DHS has failed to show, by a preponderance of the credible evidence, that petitioner is not receiving federal SSI because she "has been placed in a non-payment status code of N01 (Member's countable income exceeds Title XVI FBR) for the time period August 2013 and continuing." Therefore, it was not correct to discontinue petitioner's State SSI Supplement.

CONCLUSIONS OF LAW

For the reasons explained above, it was not correct to discontinue petitioner's State SSI Supplement.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to DHS, that DHS not discontinue petitioner's State SSI Supplement effective August 1, 2013, and that, within 10 days of the date of this *Decision*, DHS issue to petitioner all

State SSI Supplement for which she is otherwise eligible, retroactive to August 1, 2013, and which have not already been issued to her.

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, Room 651, 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 December, 2013

_____

\sSean P. Maloney
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 December 4, 2013.

Division of Health Care Access And Accountability
State SSI