



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/152428

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 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 - State SSI Unit, in regards to overpayments of State Supplemental Security Income benefits, a telephone hearing was held on October 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department has correctly determined that the petitioner was overpaid \$418.90 in State Supplemental Security Income benefits in the period of August – December, 2012.

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

Written Appearance By: Melissa Sherry, State SSI Analyst,
Division of Health Care Access And Accountability
State Supplemental Security Income Unit
P.O. Box 6680
Madison, WI 53716-6680

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was receiving federal Supplemental Security Income cash benefits in at least July, 2012.

2. In mid-2012, the petitioner reported new and additional earnings to the Social Security Administration, and the federal agency determined that her income was too high for her to continue being eligible for cash Supplemental Security Income; and the federal agency placed her in Payment Status NO4 (Member's unearned income exceeds the amount that is allowed under this program) for the months of August – December, 2012, and determined that she had been overpaid federal SSI benefits in those months.
3. Concurrently, the Wisconsin Department of Health Services, State SSI Unit had also been paying the petitioner \$83.78 per month in State Supplemental Security Income benefits in each of the months of August – December, 2012.
4. On a date unknown in September, 2013, the Department issued a Notice to the petitioner informing her that it had determined that she had been overpaid \$418.90 in State SSI benefits for the period of August – December, 2012, i.e., 5 months x \$83.78=\$418.90; and that it would be recouped at the rate of 10% of her benefit per month until completely recovered.
5. On September 27, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the determination that she was overpaid State SSI benefits of \$418.90.

DISCUSSION

A person can only receive SSI State Supplement benefits if she also receives federal Supplemental Security Income (SSI) cash benefits in a given month. See, Wis. Stat. § 49.77(2)(a)2. See also, 20 C.F.R. § 416.2025(b)(4).

The petitioner was determined by the Social Security Administration to be in a federal SSI non-payment/non-eligible status, i.e., “NO4” which means that she was ineligible due to unearned income in excess of federal SSI program limits. The federal agency informed the Department, and the Department acted to recover all State SSI payments made to the petitioner in the period of time in which she was also ineligible for federal SSI payments, i.e., August – December, 2012. See, Exhibits #1 & #2.

The petitioner admitted that her federal SSI benefit ended due to excess income; that she had been subjected to a federal recovery effort for the federal SSI benefits overpaid; and that her federal SSI benefits were subsequently restored because the income had decreased or stopped. There is no exception present under law for this circumstance. See, Wis. Stat. § 49.77(2)(a)2. See also, 20 C.F.R. § 416.2025(b)(4).

The Department's action was correct under the facts, and the overpayment recovery action must be sustained. The petitioner was overpaid \$418.90 during the period of August – December, 2012, and the agency correctly seeks to recover the overpayment by 10% recoupments from ongoing benefits.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$418.90 in State SSI benefits between August – December, 2012; and that it must recoup this overpayment from ongoing State SSI benefits.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same 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 Madison,
Wisconsin, this 1st day of November, 2013

\sKenneth D. Duren, Assistant Administrator
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 November 1, 2013.

Division of Health Care Access And Accountability
State SSI