



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

SSO/152556

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 03, 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 telephone hearing was held on November 19, 2013, at La Crosse, Wisconsin. The record was held open, with petitioner's consent, to request further information from the respondent. No such information was received from the respondent.

The issue for determination is whether the respondent has established an overpayment of State SSI benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

Written Appearance by: Melissa Sherry  
Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of La Crosse County. He was receiving federal Supplemental Security Income cash benefits in at least 2012 and 2013.

2. On August 22, 2013, the respondent notified petitioner that his household income was too high for him to be eligible for Supplemental Security Income benefits; the federal agency placed him in Payment Status NO1 (Member's countable income exceeds title XVI FBR) for the months of October, 2012 – April, 2013.
3. The respondent's SSI Unit had been paying the petitioner \$83.78 per month in State Supplemental Security Income benefits in each of the months of February, 2013 – April, 2013.
4. Respondent's August 22, 2013, notice indicated that the respondent had determined that petitioner had been overpaid State SSI benefits for the period of February, 2013 – April, 2013, i.e., 3 months x \$83.78=\$251.34); and that it would be recouped at the rate of 10% of his benefits per month until completely recovered.
5. On October 3, 2013, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the determination that he was overpaid State SSI benefits of \$251.34.

### **DISCUSSION**

A person can only receive SSI State Supplement benefits if he 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., "NO1" which means that he was ineligible due to counted income in excess of federal SSI program limits. The federal agency informed the Department, and the Department acted to recover State SSI payments made to the petitioner in the period of time in which he was also ineligible for federal SSI payments, i.e., February, 2013 – April, 2013. See, Exhibit 3.

The petitioner argued that the federal determination was in error, due to a double counting of income; the federal decision is the subject of a pending appeal. The petitioner testified that petitioner's father was employed in January, February, and March of 2013. Petitioner's father became self-employed in April of 2013. The petitioner reported this information to the Social Security office. Petitioner alleges that the Social Security office averaged petitioner's father's income over the entire year, which resulted in his employment income being increased by his self-employment income incorrectly for the months of January – March of 2013. In fact, petitioner argues, there was no self-employment income during the months of January-Marcy of 2013.

With petitioner's consent, this administrative law judge held the record open to allow the respondent, who had appeared for hearing in writing only, to respond to the petitioner's account. The respondent did not respond to this request, or to a subsequent follow-up communication. Based upon the testimony of the petitioner, in conjunction with the lack of response from the respondent, I conclude that the respondent has not established that it has correctly determined an overpayment in the present matter.

The Department's action was not correct under the facts as established at hearing, and the overpayment recovery action cannot be sustained.

### **CONCLUSIONS OF LAW**

The respondent has failed to establish that it has correctly determined that the petitioner was overpaid \$251.34 in State SSI benefits between February – March, 2013.

**THEREFORE, it is**

**ORDERED**

That this matter shall be remanded to the respondent to rescind the determined overpayment of State SSI benefits to petitioner in the amount of \$251.34 pertaining to the time period of February – March, 2013. All actions required by this Order shall be completed within 10 days following issuance 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, 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 21st day of January, 2014

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\sPeter McCombs  
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 January 21, 2014.

Division of Health Care Access and Accountability  
State SSI