



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSP/153128

PRELIMINARY RECITALS

Pursuant to a petition filed October 26, 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 State Supplemental SSI benefits, a rescheduled hearing was held on January 13, 2014, at Green Bay, Wisconsin. Petitioner requested a reschedule of the hearing set for December 9, 2013.

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

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, Room 651
Madison, Wisconsin 53703

By: Melissa Sherry, State SSI analyst
Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
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 claimed that she was 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.”

3. In petitioner’s prior hearing in Case No. MSI/150964 before ALJ Sean Maloney in MSI/150964, Judge Maloney concluded in his December 4, 2013 decision that the matter was remanded to DHA, and that DHS not discontinue petitioner’s State SSI supplement effective September 1, 2013 and to issue to petitioner all State SSI benefits for which she was otherwise eligible retroactive to September 1, 2013.
4. DHA incorrectly sent an October 18, 2013 notice to the petitioner stating that her State SSI would discontinue effective December 1, 2013 due allegedly due her federal SSI ending November 1, 2013.
5. DHS never established with any reliable evidence that petitioner’s federal SSI ended.
6. The petitioner timely filed the instant appeal in SSP/153128.
7. Petitioner testified convincingly at her rescheduled hearing on January 13, 2014 that her federal SSI has not ended. Petitioner testified that she receives about \$700 in federal SSI and about \$138 in State SSI benefits.
8. DHS State SSI analyst, Melissa Sherry, sent a December 20, 2013 letter to DHA stating in pertinent part: “. . . This member’s record is in a valid payment status for November 2013. The member was issued this payment on November 1, 2013 and at this time there is no indication of a loss or reduction in State SSI cash benefit or the associated Medicaid benefits pending at this time. See Exhibit 1.

DISCUSSION

In his December 4, 2013 decision ALJ Maloney stated the following in the discussion section of his decision:

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.

As indicated in Finding of Fact #8 above, DHS basically stipulated that as of November 1, 2013, petitioner was eligible for SSI MA and State SSI benefits. There is no evidence in the record to refute the petitioner’s testimony that she received continued State SSI and SSI MA benefits. Finding of Fact #7 above. Accordingly, based upon the above, I conclude that petitioner is eligible for State SSI and SSI MA retroactive to September 1, 2013 (incorporating ALJ Maloney’s prior decision).

CONCLUSIONS OF LAW

Petitioner is eligible for State SSI and SSI MA retroactive to September 1, 2013 (incorporating ALJ Maloney’s prior decisions regarding petitioner in MSI/150964 and SSP/150963).

THEREFORE, it is

ORDERED

The matter is remanded to DHS with instructions to take the necessary administrative actions to certify the petitioner as eligible for State SSI and SSI MA retroactive to September 1, 2013 (incorporating ALJ Maloney’s prior decisions regarding petitioner in MSI/150964 and SSP/150963), within 10 days of the date 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 12th day of February, 2014

\sGary M. Wolkstein
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 February 12, 2014.

Division of Health Care Access and Accountability
State SSI