



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

SSP/153851

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 3, 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 regards to a determination that the petitioner was overpaid State Supplemental SSI benefits, a telephone hearing was held on May 5, 2014, at Madison, Wisconsin.

The issue for determination is whether the petitioner was overpaid \$251.34 in State Supplement Security Income in the period of February, March & April, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: No Appearance  
Wisconsin Department of Health Services  
Division of Health Care Access and Accountability  
SSI Unit  
P.O. Box 309  
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:  
Kenneth D. Duren, Assistant Administrator  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County. Her payee for Social Security benefits is [REDACTED] [REDACTED]
2. The petitioner was receiving federal SSI and state SSI supplement benefits in at least January, 2013.

3. On November 21, 2013, the Department, by the State SSI Unit, issued a Notice to the petitioner informing her that the agency had determined that she had been overpaid \$251.34, i.e., \$83.78 for each of the months of February, March and April, 2013, apparently because the federal SSI crossmatch was reporting that she had been incarcerated in those months.
4. On December 3, 2013, the petitioner filed an appeal contesting the overpayment determination.
5. The petitioner was incarcerated in February, 2013, only for four days, February 21-25. She was not incarcerated in March, 2013. She was again incarcerated beginning on April 4, 2013, for the remainder of April. See, Exhibit #1, at p. 4.
6. The petitioner returned the \$83.78 check for April, 2013, State SSI Supplement benefits to the Department by mail; her payee conceded the petitioner was not eligible for that month.
7. The federal SSI agency subsequently reversed and rescinded the cessation of federal SSI benefits to the petitioner for the entire period of February – April, 2013; as distinct from waiving it.
8. The Department failed to appear at the hearing set for May 5, 2014; and failed at any time prior to the hearing in the six months since the appeal was filed to provide a Summary explaining its actions or any documentation in support of its action.

### DISCUSSION

In a fair hearing concerning an overpayment determination that the agency asserts occurred, the Department bears the burden of persuasion to establish that the overpayment occurred, and the petitioner then bears the burden of establishing by the greater weight of the proof that the overpayment determination was incorrect.

Here, the Department has failed to provide exhibits, Summary or appear at the telephone hearing. Rather, the petitioner has provided almost all that is known about the case, including the Notice of the overpayment determination.

█ testified in a clear, convincing and fully credible manner, as corroborated by Exhibits #1 - #7, that she doggedly pursued the federal agency to have the petitioner's federal SSI benefits fully restored for February – April, 2013, and was successful. In addition, she credibly testified that in any event, the petitioner was not incarcerated at all in March, 2013; for 4 days in February, 2013; and for April 5 – 30, 2013; and then she repaid the April State SSI benefit to the state by mail.

To all of this testimony, the Department answers *nothing*. It is missing in action. On this record, I can only conclude that the State SSI Supplement overpayment determination must be reversed in its entirety. The petitioner asked for no more as a remedy, and this is granted. If the Department desires to prevail in such cases, it must participate in the process in the requisite manner that has prevailed for two decades. The agency is directed to expunge the \$251.34 overpayment from the petitioner's record and to cease any and all activity to attempt to collect upon it from her by any method. The petitioner would be well-advised to retain a copy of this Decision and submit it to any party that again seeks to recover this specific debt from her.

### CONCLUSIONS OF LAW

That the Department has not met its duty or burden to demonstrate that the petitioner was overpaid \$251.34 in State SSI Supplement payments in the period of February – April, 2013; and the petitioner has credibly rebutted the agency on this record.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the Wisconsin Department of Health Services and its agents, EDS and/or the SSI Unit, with instructions to: rescind and reverse the determination that the petitioner was overpaid

\$251.34 of State SSI Supplement payments in February – April, 2013; expunge the overpayment determination from her record; and cease any and all efforts to recover this overpayment by any means. These actions shall be completed within 10 days of the date of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 7th day of May, 2014

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\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 May 7, 2014.

Division of Health Care Access and Accountability  
State SSI