



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

In the Matter of

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

DECISION

SSO/154326

PRELIMINARY RECITALS

Pursuant to a petition filed December 17, 2013, under Wis. Admin. Code, § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA) to recover State Supplemental Security Income (SSI), a hearing was held on February 18, 2014, by telephone.

The issue for determination is whether petitioner was overpaid State SSI.

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No appearance

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marquette County.
2. Petitioner receives both federal and state SSI.
3. Petitioner was notified that she was overpaid an unspecified amount of state SSI. She filed this appeal.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its state supplemental SSI payments separately from federal SSI payments (they had previously been sent out as one check by the SSA), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that were done by the SSA for the federal SSI. One such function is the recovery of state SSI overpayments. When the state seeks to recover an overpayment, it must inform the recipient or former recipient of the action, and give that person the right to appeal the decision.

Wis. Admin. Code, §DHS 2.04(3) allows for the department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrectly paid benefits including state SSI, regardless of fault. "Incorrectly paid benefits" means payments in an amount in excess of what the person was eligible to receive during the period in which the payments were made. Admin. Code, §DHS 2.03(5).

Petitioner was and is eligible for state SSI because she is a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. From what I can tell she was informed by the state that she was overpaid because the Social Security Administration (SSA) determined that she was ineligible for federal SSI at some point. Petitioner's guardian testified that she is working with the SSA to clear up the problem.

With regard to this appeal, the state SSI office has not responded in any manner. There is no evidence on the amount of the claimed overpayment and the period covered. The agency thus has not proven that petitioner was overpaid state SSI.

CONCLUSIONS OF LAW

The agency has not proven that petitioner was overpaid state SSI.

THEREFORE, it is

ORDERED

That the matter be remanded to the state SSI with instructions to rescind any overpayment against petitioner, to cease recovery of any overpayment, and to reimburse petitioner any funds already recovered. The agency shall take the action within 10 days 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

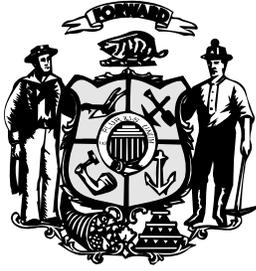
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 24th day of February, 2014

\sBrian C. Schneider
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 24, 2014.

Division of Health Care Access and Accountability
State SSI