



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION ON REHEARING

SSO/154913

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2014, 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 (DHCAA or Division) in regard to Medical Assistance (MA), a hearing was scheduled for February 19, 2014; the petitioner asked that it be rescheduled. Another hearing was set for March 12, 2014. The petitioner did not appear and the matter was dismissed. The petitioner timely requested a rehearing; that request was granted. The hearing was then held on May 15, 2014, by telephone. The hearing record was held open through May 28, 2014, for receipt of a submission from the petitioner, which was received.

The issue for determination is whether the petitioner was overpaid in State Supplemental SSI benefits from October 2009 through April 2012 (non-continuous), and in June 2013.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



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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:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Dane County.

2. The petitioner, age 65, is a disabled person who receives Social Security benefits. She received federal SSI and State Supplemental SSI benefits in 2009, 2010, 2011 and 2012.
3. On May 24, 2012, the Department issued a *Notice of State SSI and/or Caretaker Supplement Overpayment* to the petitioner at her correct address. The *Notice* advised that she was overpaid \$238.70 for October 2009, \$179.77 for January 2010, and \$179.77 for February 2010. The basis for overpayment was the federal Social Security Administration's determination that she was ineligible for federal SSI due to excess income. She received this *Notice*. See, Exhibit 12-A.
4. On September 20, 2012, the Department issued a *Notice of State SSI and/or Caretaker Supplement Overpayment* to the petitioner at her correct address. The *Notice* advised that she was overpaid State Supplement SSI benefits of \$179.77 in each of the following months: November 2011, December 2011, January 2012, February 2012, March 2012, and April 2012. The basis for the overpayment was the federal Social Security Administration's determination that she was ineligible for federal SSI due to excess income. She received this *Notice*. See, Exhibit 12-B. The Department began overpayment recovery by recouping \$17.98 from the petitioner's monthly benefit from October 2012 forward.
5. On March 20, 2014, the Department issued a *Notice of State SSI and/or Caretaker Supplement Overpayment* to the petitioner at her correct address. The *Notice* advised that she was overpaid State Supplement SSI benefits of \$179.77 for June 2013. The basis for the overpayment was the federal Social Security Administrations' determination that she was ineligible for federal SSI due to excess income. She received this *Notice*.
6. The petitioner's state fair hearing requests from January 1, 2007 forward consist of #88150 (FoodShare), #151211 (FoodShare, dismissed for nonappearance), and #154879 (FoodShare, decided by this Judge in August 2014).

DISCUSSION

An individual is only eligible to receive *state* SSI State Supplement benefits if he was also eligible to receive *federal* Supplemental Security Income (SSI) benefits in a given month. Wis. Stat § 49.77(2)(a)2. See also, 20 C.F.R. § 416.2025(b)(4). SSI State Supplement benefits incorrectly paid to a recipient may be recovered by the State. Wis. Admin. Code § DHS 2.04(1).

"Incorrectly paid benefits" means payments of any amounts disbursed to a person who was not eligible for any benefit during the period for which the benefit was paid. Wis. Admin. Code § DHS 2.03(5). A person's monthly SSI State Supplement may be reduced to recover such an overpayment. Wis. Admin. Code § DHS 2.04(3).

The federal Social Security Administration has advised Wisconsin that the petitioner was ineligible for federal SSI in all of the months identified in Findings #3, #4, and #5, above. The petitioner has produced no credible evidence that she was eligible for federal SSI in those months. She testified that there has been a misunderstanding related to her creation of a PASS plan in 2013, which has resulted in an erroneous federal determination of her assets or income. A PASS (Plan to Achieve Self-Support) plan lets disabled individual set aside money she owns to pay for items or services needed to achieve a specific work goal. See, <http://www.socialsecurity.gov/disabilityresearch/wi/pass.htm>. The recipient may stash assets in the Plan to avoid going over the program's asset limit. The recipient may also divert income to the Plan. The Social Security Administration must approve the PASS Plan for it to be valid. The petitioner has not produced an *SSA-approved* PASS Plan into this hearing record, so I find that the Department's action was correct. The petitioner did provide documentation to show that she has some sort of lawsuit pending in federal court against the Social Security Administration, but I cannot determine

the subject of the lawsuit from her documentation. In any event, the lawsuit has not yet been resolved in her favor.

Finally, the petitioner's hearing request deals with overpayment determinations made in 2012. I did not dismiss her appeal as untimely because the overpayment notices do not identify a deadline for filing an appeal; they only identify a deadline for "aid continuation pending appeal"/prevention of recoupment commencement.

CONCLUSIONS OF LAW

The Department correctly seeks recovery of State Supplemental SSI overpayments from the petitioner for the following months: October 2009, January 2010, February 2010, November 2011, December 2011, January 2012, February 2012, March 2012, April 2012, and June 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

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 6th day of August, 2014

\sNancy J. Gagnon
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 August 6, 2014.

Division of Health Care Access and Accountability
State SSI