



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

SSO/156911

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 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 in regard to SSI State Supplement benefits, a hearing was held on May 28, 2014, by telephone.

The issue for determination is whether the petitioner was overpaid *State* SSI benefits during the March 2013 through October 2013 period.

There appeared at that time 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: written submission of 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 is a resident of Marinette County.

2. The petitioner received federal Supplemental Security Income (SSI) benefits continuously from at least March 2013 through October 2013. She also received SSI State Supplement benefits in all of those months.
3. At some point after the federal SSI benefits were issued for the March through October 2013 period, the federal Social Security Administration (SSA) decided that it had overpaid the petitioner. It notified both the petitioner and the State of Wisconsin Department of Health Services of the overpayment determination. The SSA's theory of the overpayment was that the petitioner's husband was living with her during these months, that he had income, and that his income made her ineligible for SSI.
4. Because the SSA notified Wisconsin of the overpayment, the Department issued a *Notice of State SSI and/or Caretaker Supplement Overpayment* to the petitioner on March 20, 2014. The *Notice* advises the petitioner that she was overpaid CTS and State Supplemental SSI benefits for the March through October 2013 period totaling \$3,243.44. The petitioner appealed.
5. On May 12, 2014, the SSA issued a corrective notice to the petitioner. It declared that the SSA was "changing your payments for months in the past." It identifies the months for which the petitioner will receive a \$232 monthly SSI payment as being "from March 1, 2013 through October 31, 2013." It explains, "beginning March 2013, we no longer count any part of the money received and things owned by your spouse, ██████████ ██████████, to decide if you can get SSI; this is because you no longer lived with him beginning February 2013."

DISCUSSION

An individual is only eligible to receive *state* SSI State Supplement benefits if s/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); Wis. Stat. § 49.847.

In this case, the Department believed that an overpayment occurred in 2013 because SSA told the Department that the petitioner/caretaker should not have been an SSI recipient at that time. The petitioner has now proven that the SSA erred, and that she was eligible. Therefore, she was not overpaid SSI State Supplement benefits during the March through October 2013 period.

CONCLUSIONS OF LAW

1. The petitioner was eligible for federal SSI during the March through October 2013 period.
2. The petitioner was not overpaid SSI State Supplement benefits during the March through October 2013 period.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department with instructions to cease recovery on the alleged SSI State Supplement overpayment occurring from March 2013 through October 2013. This action shall be taken 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 3rd day of June, 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 June 3, 2014.

Division of Health Care Access and Accountability
State SSI