



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

MGE/158792

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 24, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on September 29, 2014, at Marinette, Wisconsin.

The issue for determination is whether petitioner should receive backdated SSI-E benefits retroactive to 1/1/2009.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Lindsay Arkan

Marinette County Department of Human Services  
Wisconsin Job Center Suite B  
1605 University Drive  
Marinette, WI 54143

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Marinette County.

2. Petitioner became eligible for SSI-E benefits on 1/1/09. Due to agency error, petitioner was not informed of this benefit or his eligibility. Petitioner applied in late 2013 and requested backdated benefits. The agency and the Department did not grant them due to the extensive backdate.
3. Petitioner filed this appeal.

### DISCUSSION

SSI-E is a monthly supplement to SSI payments for persons who have exceptional care needs. A person living in the community must need at least 40 hours per month of primary long-term support services to be eligible for the benefit. Wis. Stat., §49.77(3s). The State SSI statute, §49.77, reads as follows:

(3s) INCREASED SUPPLEMENTAL PAYMENT IN CERTAIN CASES. (a) The department shall authorize the payment of an increased state supplement to a person receiving payments under this section who resides in a residential setting if the person needs at least 40 hours per month of supportive home care, daily living skills training or community support services.

Therefore, petitioner can be eligible for SSI-E only if his disability requires him to receive substantial assistance to live in the community.

The facts were not disputed. The agency concedes that the failure was on the part of the agency and resulted in petitioner not receiving a \$95.99 benefit since the eligibility date of 1/1/09. The agency advocated at hearing for the grant of the backdate. Melissa Sherry from the Department also appeared at hearing and heard the agency representatives argue for the backdate and fully explain that petitioner was otherwise eligible for SSI-E. At hearing, Sherry conceded that there is no statute, rule, or policy that would preclude such a backdate. Sherry only explained that the Department does not typically see cases with such a request and would prefer and ALJ to make such decision.

Based on the facts and the testimony, I find the grant of the backdate appropriate under these very limited circumstances.

### CONCLUSIONS OF LAW

The backdated benefits shall be granted to the date of eligibility as the agency concedes error.

**THEREFORE, it is** **ORDERED**

That the matter is remanded to the Department and its county agent with instructions to effect SSI-E eligibility for petitioner effective 1/1/09 and to issue retroactive benefits. These actions shall be completed within 10 days.

### **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 9th day of October, 2014

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 9, 2014.

Marinette County Department of Human Services  
Division of Health Care Access and Accountability  
[melissa.sherry@wisconsin.gov](mailto:melissa.sherry@wisconsin.gov)