



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

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

SSO/160542

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 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 Medical Assistance, a hearing was held on October 29, 2014, at Viroqua, Wisconsin.

The issue for determination is whether the Department is correctly seeking to recover an overpayment of State SSI Supplement payments from the petitioner from the period of December, 2013 through April, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Representative:

[Redacted]
[Redacted]
[Redacted]

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
State SSI Unit
P.O. Box 6680
Madison, WI 53716-0680

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Vernon County.
2. The petitioner was receiving Wisconsin State SSI during the period of October, 2012 through April, 2014, because of receipt of federal Supplemental Security Income (SSI) from the Social Security Administration (SSA).
3. During August, 2014, the State of Wisconsin SSI Unit sent a notice to the petitioner which indicated that petitioner received a State SSI overpayment in the amount of \$1,977.47 for the period of December, 2013 through April, 2014.
4. The State SSI program sent a September 18, 2014 summary letter to the Division of Hearings and Appeals (DHA) indicating that petitioner received a State SSI overpayment of \$1,977.47 for the period of December, 2013 through April, 2014 (\$179.77 per month), due to petitioner not receiving federal SSI during that same period due to above the income eligibility limit (excess unearned income (NO4)).
5. The petitioner's guardian and representative, Redact, was unable to provide any evidence to establish that petitioner was eligible for federal SSI during the period of December, 2013 through April, 2014 or that Social Security had reversed its federal SSI overpayment during that same period.

DISCUSSION

Wisconsin law requires the Department of Health Services to recover any overpayments of assistance, regardless of fault. Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Adm. Code § DHS 79.40. "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Adm. Code § DHS 79.30(2). The petitioner was eligible for state SSI benefits only if petitioner met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2). This means that **petitioner must have properly received federal SSI to receive state SSI**. See Wis. Stat. § 49.77(2)(a)2; See also 20 C.F.R. §416.2025(b)(4).

During the October 29, 2014 hearing, petitioner's guardian and representative, Redact, was unable to provide any evidence to establish that petitioner was eligible for federal SSI during the period of December, 2013 through April, 2014, or that Social Security had reversed its federal SSI overpayment due to over the income eligibility limit. Therefore, petitioner was not eligible for state SSI benefits because he was not eligible for federal SSI during the overpayment period in question. Accordingly, based upon the above, I must conclude that the Department is correctly seeking to recover from the petitioner an overpayment of State SSI Supplement payments from the period of December, 2013 through April, 2014.

CONCLUSIONS OF LAW

The Department is correctly seeking to recover an overpayment of State SSI Supplement payments from the petitioner from the period of December, 2013 through April, 2014.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

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 January, 2015

\sGary M. Wolkstein
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 January 7, 2015.

Division of Health Care Access and Accountability
State SSI