



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redacted case information

DECISION

SSO/161789

PRELIMINARY RECITALS

Pursuant to a petition filed November 6, 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) to recover State Supplement Supplemental Security Income (SSI), a hearing was held on January 14, 2015, by telephone.

The issue for determination is whether the state SSI Unit may recover a state SSI overpayment.

PARTIES IN INTEREST:

Petitioner:

Redacted petitioner information

Respondent:

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

By: Written submission of Redacted
Division of Health Care Access and Accountability
P.O. Box 6680
Madison, WI 53716-6680

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # Redacted) is a resident of Sauk County.
2. Petitioner receives federal and state SSI. In 2014 the Social Security Administration (SSA) determined that petitioner was ineligible for federal SSI in September, 2013, and January through March, 2014 because her resources were too high.

3. By a notice dated October 23, 2014, the state SSI Office informed petitioner that she was overpaid \$719.08 in state SSI in those months because the SSA determined that she was ineligible.

### 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. Because the SSA determined that she was ineligible for federal SSI in September, 2013 and January through March, 2014, it follows that she also was ineligible for state SSI during those months. Thus the state has determined correctly that petitioner was overpaid state SSI; the state action is based entirely on the SSA action.

Ms. Arnold testified that the matter was cleared up with the SSA, but I checked the SSA record and it still shows petitioner being ineligible for SSI in the four months. It also shows that the SSA has not waived recovery of the overpayment. Even if the SSA waives recovery, the state does not have to follow the waiver, and the state office as a rule does not waive recovery of state SSI overpayments. Because of the state law tying state SSI overpayments to the SSA actions, the state SSI overpayment will be rescinded only if the federal SSI overpayment is rescinded.

### CONCLUSIONS OF LAW

The agency correctly sought to recover state SSI from four months in 2013 and 2014 because the federal SSA determined that petitioner was ineligible for federal SSI in those months.

**THEREFORE, it is**

**ORDERED**

That 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 21st day of January, 2015

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\sBrian C. Schneider  
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 January 21, 2015.

Division of Health Care Access and Accountability  
State SSI