



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2015, 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 20, 2015, at Wisconsin Rapids, Wisconsin. At petitioner's request, the hearing was rescheduled from original dates of 7/21/15, 8/19/15, and 9/22/15 to allow petitioner to contact the federal and/or state agencies in order to attempt resolution.

The issue for determination is whether the Department erred in its determination of a state supplemental income overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Theresa A. Selenske
5020 Mill Avenue
Wisconsin Rapids, WI 54494-7289

Respondent:

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

By: [REDACTED] (in writing)

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. Petitioner received \$1,005.36 in state SSI supplement payment from February 2014 to February 2015.
3. The federal SSA has now determined that petitioner was not actually eligible for SSI during that period.
4. The state DHS has determined a state supplement overpayment for that period.
5. The petitioner filed a timely appeal.

DISCUSSION

In order to receive the SSI State Supplement, most persons must also be eligible to receive federal SSI through the Social Security Administration (SSA). Some states issue supplemental payments to SSI recipients living within their states, while others choose not to do so. Wisconsin is a state that has chosen to issue a monthly supplemental payment to Wisconsin residents who receive federal SSI. However, a condition of receiving this payment is that the person must be eligible to receive federal SSI (Title XVI):

49.77 State supplemental payments. ...

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

...

2. Any needy person or couple residing in this state and *receiving benefits under federal Title XVI.*

...

Wis. Stat. §49.77(2)2 (emphasis added).

The SSA has informed the State that the petitioner was not eligible for SSI, due to excess assets, from February 2014 through February 2015. Wisconsin law requires the Department to seek recovery of many types of incorrectly paid state benefits. This includes State SSI Supplement benefits. See Wis. Admin. Code § DHS 2.03(3). "Incorrectly paid benefits" means payments of any amount dispersed to an individual who was not eligible for any benefit amount during the period for which the payment was made or in an amount which was in excess of the amount for which the person was eligible during the period for which the payment was made." See Wis. Admin. Code § DHS 2.03(5). Thus, Wisconsin law mandates that all incorrectly paid benefits must be recovered per Wis. Admin Code § DHS 2.04. That is true of current recipients and former recipients.

An individual's monthly State SSI payment may be reduced for the purpose of recovering a State SSI overpayment. See Wis. Admin. Code § DHS 2.04(5). Current recipients will have their state grant reduced by no more than 10% until the full amount of the incorrect payment is recovered by the Department, unless the individual requests a larger percentage deduction. If the individual is ineligible for SSI, s/he can make arrangements for repayment.

The Department maintains that petitioner was not eligible for federal SSI during the pertinent time period. Evidence indicates that this is correct and that it remained the federal position at the time of hearing. Petitioner may, at some point, persuade the federal government that its determination is in error. Hearing in this matter was delayed several months in order to allow petitioner's counsel an opportunity to resolve the issue with the federal agency, to no avail. If the federal government later decides that petitioner was actually eligible for federal SSI then petitioner may once again find herself eligible for the state supplement. Similarly, if the federal government forgives any federal overpayment then petitioner may also be eligible for a waiver of this overpayment of the state supplement. But, as it currently stands, the

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federal SSA has determined that petitioner should not have been receiving federal SSI and she, thus, was overpaid the state supplemental payments during the same period.

CONCLUSIONS OF LAW

The Department did not err in determining that the \$1,005.36 must be recouped.

THEREFORE, it is

ORDERED

That this appeal is 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 28th day of December, 2015

\sJohn P. Tedesco
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 December 28, 2015.

Division of Health Care Access and Accountability
State SSI
Attorney Theresa Selenske