



FH

[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 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 January 08, 2016, at New Richmond, Wisconsin. The petitioner missed the original hearing, but her November 24, 2015, request for a rehearing was granted on December 10, 2015.

The issue for determination is the State SSI Unit has presented enough evidence to prove that the petitioner received the overpayment it alleges.

There appeared at that time and place 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: Letter from unknown person
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.

2. The State SSI Unit alleged on September 24, 2015, that the petitioner was overpaid \$130.43 per month in November and December 2014 and January and June 2015 because her income exceeded the program's limit.
3. The State SSI Unit did not provide any evidence supporting its claim.

DISCUSSION

Wisconsin law allows the Department of Health Services to recover any incorrectly paid benefits within a year of when the incorrect payment was discovered. It does not matter whose fault caused the incorrect payment. Wis. Admin. Code, § DHS 2.04(1)(a). Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Admin. Code § DHS 2.04(3). "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Admin. Code § DHS 2.03(5). The petitioner was eligible for state SSI benefits only if she met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2).

The Department seeks to recover \$521.72 in State SSI payment made to the petitioner over four months because it contends that her income exceeded the program's limit in each of those months. The Department has the burden of proving the claim by the preponderance of the credible evidence. It presented no evidence about how it determined her income—in fact it did not even indicate what it believed her income was. All it has is an allegation. This is not enough. I will order the Department to end its attempts to recover any benefits she has received since November 2014 and repay any benefits it has recovered.

CONCLUSIONS OF LAW

The State SSI Unit has not established that the petitioner was overpaid any State SSI benefits since November 2014, and it is not entitled to any benefits it has recovered that were provided during that period.

NOW, THEREFORE, it is ORDERED

That this matter is remanded to the Department of Health Services with instructions that within 10 days of the date of this decision it end all attempts to recover any State SSI payments made to the petitioner since November 2014 and that it take all steps necessary to ensure that she is repaid any benefits that have been recovered from her since then.

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 8th day of January, 2016

\sMichael D. O'Brien
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 8, 2016.

Division of Health Care Access and Accountability
State SSI