



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: SSO - 195694

PRELIMINARY RECITALS

Pursuant to a petition filed on September 4, 2019, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Medicaid Services regarding State Supplemental SSI benefits, a hearing was held on October 8, 2019, by telephone.

The issue for determination is whether the petitioner is liable for an overpayment of State Supplement SSI benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: written submittal of [REDACTED], State SSI analyst
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner has been a recipient of federal Supplemental Security Income (SSI) benefits and state SSI benefits.

3. On some unknown date the *federal* Social Security Administration (SSA) concluded petitioner was not eligible for federal SSI payments issued for the period of October 2016 – August 2019. Therefore, SSA concluded petitioner was overpaid federal SSI for those months. This conclusion was based upon the decision petitioner exceeded the allowable income limits for financial eligibility for the *federal* SSI payment.
4. Upon concluding petitioner was overpaid *federal* SSI benefits, the SSA placed petitioner in a “retroactive payment status of N01 (member’s countable income exceeds Title XVI FBR).” See Exhibit 1.
5. The State of Wisconsin was subsequently notified of this *federal* determination and petitioner’s classification as “N01.”
6. On August 22, 2019 the *state* SSI Unit issued a notice to petitioner asserting he had also been overissued *state* SSI payments for the period of April 2017 – March 2018 in the total amount of \$1005.36. That notice explained that the basis of the *state* overpayment was the *federal* Social Security conclusion that petitioner’s income exceeded the amount allowable under the program limits.
7. On May 15, 2019 the SSA informed the state SSI unit that the overpayment only includes the period of April 2017-December 2017. The state SSI unit then reduced the state SSI overpayment accordingly to the total amount of \$754.02

DISCUSSION

An individual is only eligible to receive *state* SSI State Supplement benefits if s/he also receives *federal* Supplemental Security Income (SSI) benefits in a given month. Wis. Stat. §49.77(2)(a)2. See also, 20 C.F.R. §416.2025(b)(4). A person is eligible for State SSI only if they meet the income/resource limitations and nonfinancial eligibility requirements of the federal SSI program. Wis. Stat. §49.77(2)(a). State SSI benefits incorrectly paid to a recipient may be recovered by the State. Wis. Admin. Code §DHS 2.04(1).

“Incorrectly paid benefits” means payments of any amounts disbursed to a person who was *not eligible* for any benefit during the period for which the benefit was paid or paid in an amount in excess of the amount that the individual was eligible to receive. Wis. Admin. Code §DHS 2.03(5). A person’s monthly SSI State Supplement may be reduced to recover such an overpayment. Wis. Admin. Code §DHS 2.04(3).

The *state* SSI program obtained information from the Social Security Administration indicating that petitioner had been overissued *federal* SSI payments - ultimately -for the period of April 2017-December 2017 which were subject to recovery. The basis for that determination was the conclusion petitioner had income which exceeded the allowable limit for the period at issue and therefore he was *not eligible* for federal SSI during that period. The Social Security Administration uses a coding of “N01” for such a case. As *state* SSI eligibility is based upon *federal* SSI eligibility, the state simply concluded state SSI payments *were also* overpayments subject to recovery. The state notified petitioner of this determination and he appealed.

On September 11, 2019 the *state* SSI Unit issued a summary pursuant to petitioner’s appeal. At that time the state reviewed the Social Security information and asserted the SSA continued to find petitioner had been overissued *federal* SSI payments for the period of April 2017-December 2017 based upon the fact he was not eligible for those payments. Therefore, the state affirmed it still considered *state* SSI payments issued to be recoverable overpayments. If he wishes to contest the *federal* SSI overpayment, he must contact the Social Security Administration. Petitioner indicated at this hearing that he had done so and

had set up a repayment agreement. He did not contest the state SSI overpayment, but rather explained he was previously unaware of the income limits and had confused this state matter with the federal matter.

For petitioner's information, I provide the following:

The Code of Federal Regulations which govern *federal* SSI eligibility, specifically note that whenever SSA concludes an individual has been overissued benefits, the individual may request a (1) *waiver* of repayment of the alleged overpayment or (2) *reconsideration* of that the overpayment determination. 20 C.F.R. § 404.502a. From my reading of that section, it appears a *waiver* request does not dispute the fact the individual was overpaid, but requests repayment of that amount be waived based upon an equitable factor such as lack of fault. A *reconsideration* request asserts the overpayment was not correctly calculated, or the individual was eligible for the SSI received and therefore was not overissued SSI subject to recovery. .

Further, the State of Wisconsin is allowed to waive a repayment as well, just as it notified petitioner in the notice of overpayment. It states:

How do I ask a waiver for State SSI and/or Caretaker Supplement overpayments?

You can ask the state of Wisconsin to waive the state SSI and/or Caretaker Supplement overpayment by completing form DDE-2539 "Request for waiver of overpayment recovery or change in repayment rate." You may obtain this form by calling: 1-800-362-3002 or go to the web, at: <http://dhs.wisconsin.gov/forms/DDEnum.asp>

There is no time limit for you to request a waiver. However, if you want your payments to continue without a reduction while you wait for a waiver decision, you must request a waiver **before the Recoupment Begin Date listed at the bottom of the Statement of SSI/Caretaker Supplement Overpayment cover sheet.**

If the state denies your request for a waiver, you may need to return the extra benefits that you received between the time you asked for your waiver and the time that the state decides your case.

For State SSI overpayments (and/or Caretaker Supplement overpayments), at our discretion, we will waive the overpayment if the Social Security Administration has waived the federal portion of SSI overpayment. If you have not done so already, call SSA at 1-800-772-1213 and ask them to waive the federal portion of the SSI overpayment. When SSA sends you a notice stating that the amount of the federal SSI overpayment has been waived (in full or in part), or if your waiver has been denied by SSA, make a copy of the SSA notice and mail it to:

HPE / State SSI
Waiver Requests
P.O. Box 6680
Madison, WI 53716-0680

If you have lost the letter from SSA, call 1-800-772-1213 and ask them to send you a duplicate.

IF YOU HAVE QUESTIONS ABOUT THIS NOTICE, PLEASE CALL THE STATE SSI PROGRAM AT 1-800-362-3002.

There is no authority for this administrative law judge to waive the instant sum. Petitioner will need to follow the information described above if he so wishes. I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing

examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Based on the evidence before me, the State SSI Unit has correctly set up an overpayment against the petitioner.

CONCLUSIONS OF LAW

Petitioner is liable for the repayment of the State SSI that he received for the period of April 2017-December 2017.

THEREFORE, it is

ORDERED

That the petition for review 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, 4822 Madison Yards Way 5th Floor, 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.

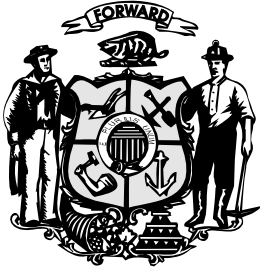
APPEAL TO COURT

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, **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 Milwaukee,
Wisconsin, this 11th day of December, 2019

\s _____
Kelly Cochrane
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 11, 2019.

Division of Medicaid Services
State SSI