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

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: SSO - 197520

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on January 9, 2020, 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 February 18, 2020, 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:

██████████  
██████████  
██████████

Respondent:

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

By: written submittal of ██████████, 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 is a resident of Walworth 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 months of August 2018 – November 2018 and February 2019 – May 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 N04 (member’s unearned income exceeds the amount that is allowed under this program).” See Exhibit 1, p.1.
5. The State of Wisconsin was subsequently notified of this *federal* determination and petitioner’s classification as “N04.”
6. On December 19, 2019 the *State* SSI Unit issued a notice to petitioner asserting he had also been overissued *state* SSI payments for the months of October 2018 – November 2018 and February 2019 – May 2019 in the total amount of \$502.68. That notice explained that the basis of the *state* overpayment was the *federal* Social Security conclusion petitioner’s income exceeded the amount allowable under the program limits.

### 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 for the months of August 2018 – November 2018 and February 2019 – May 2019 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 “N04” 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 January 15, 2020 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. 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. He was reminded of this at hearing.

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. Petitioner has not yet filed anything at the federal level because he did not receive any notice according to his testimony at hearing. He can follow up with the SSA if he desires to contest the federal matter.

Further, while the SSA may waive a federal SSI overpayment, the State of Wisconsin is allowed to do so 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 or act contrary to the law. Petitioner will need to follow the information described above if he wishes to request a state waiver. 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. In other words, I cannot bypass the law because I find it unfair.

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 from October 2018 – November 2018 and February 2019 – May 2019 in the total amount of \$502.68.

**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 5<sup>th</sup> 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.

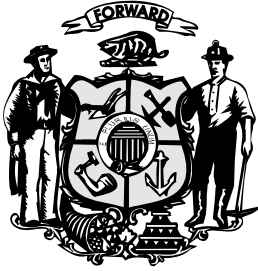
### **APPEAL TO COURT**

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 3rd day of April, 2020

\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 April 3, 2020.

Division of Medicaid Services  
State SSI