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

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In the Matter of

██████████  
██████████████████  
██████████████████████████████

**DECISION**  
Case #: SSO - 208238

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 7, 2023, under Wis. Admin. Code, §HA 3.03, to review a decision by the Division of Medicaid Services (DMS) to recover State SSI, a hearing was held on June 21, 2023, by telephone.

The issue for determination is whether petitioner was overpaid state SSI benefits.

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████████████  
██████████████████████████████

Respondent:

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

By: Written submission of Melissa Sherry  
Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County who is eligible for federal and state SSI.
2. Petitioner formerly lived in California. She moved to Dane County in August, 2021, and she began to receive Wisconsin state SSI.

3. For unclear reasons, the Social Security Administration (SSA) coded petitioner as being a California resident between December 1, 2021 and August 31, 2022. Because of that coding, the State SSI Office notified petitioner that she was overpaid \$754.02 in Wisconsin State SSI during this period, by a letter dated March 23, 2023.
4. Petitioner was a resident of Sun Prairie, Wisconsin during those months. Her federal SSI payments were deposited directly into the [REDACTED], and petitioner regularly made transactions at local businesses.

### 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. As a result, if she resides in Wisconsin, she is eligible for the Wisconsin state SSI supplement of \$83.78 monthly. When the DMS noticed that petitioner's residence within SSA records was listed as being California during several months in which Wisconsin SSI were issued, it followed that petitioner was not eligible for the Wisconsin benefits.

This is the one type of case in which the Division of Hearings and Appeals can review the merits of the overpayment. Most state SSI overpayments result from the SSA determining that the person was ineligible for federal SSI during a retroactive period. In those instances, the only response the Division of Hearings and Appeals can give is that the person must try to get the SSA to reverse the ineligibility determination. However, in this instance petitioner was eligible for federal SSI the entire period. To tell her to go to the SSA to change the residency would be a gesture of futility. The SSA does not care what state she lived in from December, 2021 through August, 2022, so it is unlikely that the SSA would even bother to change the residency code.

The evidence is convincing that petitioner resided in Sun Prairie during the months in question. Petitioner provided a copy of her bank transaction logs for the entire period, and as noted in the findings, the SSA was depositing petitioner's federal SSI into the [REDACTED] account. Also evident are numerous and regular transactions at Sun Prairie businesses, and notably, no transactions at California businesses.

I conclude, therefore, that despite the SSA coding of California as petitioner's residence during the months at issue, petitioner actually resided in Wisconsin and was entitled to the State SSI supplement. I thus will order that the overpayment be rescinded, and that any money already recovered should be reimbursed to petitioner.

## CONCLUSIONS OF LAW

Despite the SSA coding of California as petitioner's residence during the months at issue, petitioner actually resided in Wisconsin and was entitled to the State SSI supplement from December, 2021 through August, 2022.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the agency with instructions to rescind the \$754.02 state SSI overpayment claim against petitioner, and to reimburse any amount already recovered, within 10 days of this decision.

### **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 North, 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).

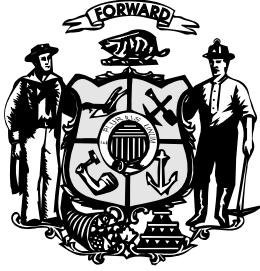
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of June, 2023

  
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Brian C. Schneider  
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 June 22, 2023.

Division of Medicaid Services  
State SSI