



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: SSO - 209011

PRELIMINARY RECITALS

Pursuant to a petition filed on June 7, 2023, 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 July 19, 2023, by telephone.

The issue for determination is whether the agency properly seeks to recover an overpayment of State SSI benefits in the total amount of \$1,565.16 for the months of March 2022 through February 2023.

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 submission of SSI Analyst Melissa Sherry
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Rusk County.
2. The Department issued Petitioner \$130.43 per month in State SSI from at least March 2022 through February 2023.
3. On an unspecified date, the State of Wisconsin's Department of Health Services ("the Department") learned that the Social Security Administration retroactively terminated Petitioner's eligibility for federal Supplemental Security Income (SSI) benefits for the months of January 2022 through February 2023. The Social Security did so based on its determination that Petitioner's nonexcludable resources exceeded the federal SSI program limit.
4. On May 25, 2023, the agency mailed Petitioner a Notice of State SSI and/or Caretaker Supplement Overpayment. The notice stated that Petitioner received a total of \$1,565.16 in State SSI benefits for the months of March 2022 through February 2023 for which she was not eligible.
5. On June 7, 2023, Petitioner filed an appeal with the Division of Hearings and Appeals.

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 Ch. DHS 2 sets forth the rules the Department must follow when recovering incorrectly paid State SSI. "Incorrectly paid benefits" means benefits paid for an individual who was not eligible for any benefits during the period for which the payment was made or benefits paid in excess of the amount that the individual was eligible to receive. Wis. Admin. Code §DHS 2.03(5).

Typically, an individual must be receiving federal SSI in order to be eligible for an SSI State Supplement payment. See Wis. Stat. §§49.77; Wisconsin SSI Administration Handbook, §2.1.1 (Release 11-01). As a result, when the SSA terminates an individual's federal SSI, the State of Wisconsin terminates that individual's State SSI cash benefit. SSI Administration Handbook at 2.1.8. The current State SSI monthly benefit rate for a married couple is \$130.43.

The Department did not appear at the hearing but submitted a letter authored by State SSI Analyst Melissa Sherry. In that letter, she explained that it established the State SSI overpayment claim against Petitioner after learning that SSA retroactively found Petitioner to be ineligible for federal SSI. A ForwardHealth printout provided by Analyst Sherry shows that Petitioner was found to be ineligible for federal SSI from January 2022 through March 2023. Exhibits A-1 and A-2. A separate ForwardHealth printout shows that the State of Wisconsin paid Petitioner State SSI benefits totaling \$130.43 per month from March 2022 through February 2023 (i.e., the overpayment claim period). Exhibit B. The Department

thus provided sufficient evidence to establish that it properly determined that Petitioner was overpaid State SSI benefits during the overpayment period.

The next question is whether the Department has properly determined the overpayment claim amount. For the following reason, I find that the Department has not.

Incorrectly paid State SSI benefits cannot be recovered for more than 12 months prior to the date of discovery of the incorrect payment. See Wis. Admin. Code §DHS 2.04(1)(b). This is commonly referred to as the “lookback period.”

The Department’s State SSI policies do not include a definition of “date of discovery.” The DHA in a prior SSI overpayment appeal noted that the date of discovery was defined as the date of the establishment of an overpayment claim and issuance of an overpayment notice for both the FoodShare (FoodShare Wisconsin Handbook §7.3.1, Release 23-01) and BadgerCare Plus (BadgerCare Plus Handbook §28.2, Release 22-03) programs. See, DHA Case No. SSO-206567. In that decision, the DHA found that while those program policies do not control in an SSI overpayment case, it does provide a reasonable framework as all three programs are administered by the Department. *Id.* I agree. Thus, I find that the date of discovery in this case is May 25, 2023, the date of the notice of overpayment. Thus, the look back period is May 25, 2022 through May 25, 2023. The Department’s attempt to recoup benefits prior to this period was improper.

Pursuant to Wis. Admin. Code §DHS 2.04(1)(b), the Department may therefore recoup the State SSI benefits that were paid to Petitioner for June 1, 2022 through February 1, 2023, totaling \$1,173.87.

Finally, I note that if the Social Security Administration reverses its determination or grants a hardship waiver, the State of Wisconsin would be required to likewise reverse its State SSI overpayment determination and to return any inappropriately recovered funds.

CONCLUSIONS OF LAW

1. The Department improperly calculated Petitioner’s overpayment claim by including benefits paid to Petitioner prior to the twelve month lookback period.
2. Petitioner was overpaid \$1,173.87 in State SSI benefits for the time period June 2022 through February 2023.

THEREFORE, it is

ORDERED

That the petition is remanded to the Department to reduce the overpayment claim from \$1,565.16 to \$1,173.87. If more than \$1,173.87 has already been recovered from Petitioner, the Department must refund the amount in excess of that figure to Petitioner. The Department must complete these actions within ten days of the date 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, 5th 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

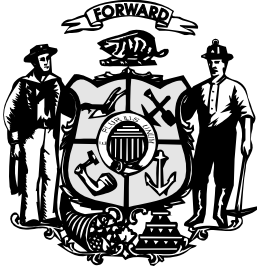
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 18th day of September, 2023

\s 

Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 18, 2023.

Division of Medicaid Services
State SSI
Attorney Terry Nussberger