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

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In the Matter of



**DECISION**  
Case #: SSO - 206537

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 4, 2022, 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 SSI, a hearing was held on November 3, 2022, by telephone.

The issue for determination is whether Petitioner was overpaid a total of \$502.68 of State SSI benefits for the time period January 2022 through June 2022.

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

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

**ADMINISTRATIVE LAW JUDGE:**

Teresa A. Perez  
Division of Hearings and Appeals

## FINDINGS OF FACT

1. Petitioner is a resident of Rock County who has received federal SSI benefits continuously from January 2020 through at least October 2022.
2. Petitioner has been homeless since at least December 2021 and she lives in her car.
3. In December 2021, Petitioner decided to temporarily leave Wisconsin and to drive to Arizona so that she would not have to endure Wisconsin's winter weather while living in her car. Petitioner never intended to remain in Arizona.
4. In March 2022, Petitioner began driving back to Wisconsin from Arizona but her car broke down. Because she could not afford to pay for all the required repairs at once, she did not get back to Wisconsin until June 2022.
5. By notice dated September 22, 2022, the agency informed Petitioner that she was overpaid \$502.68 in State SSI benefits for the time period January 2022 through 2022 because she was outside of Wisconsin.
6. Petitioner appealed.

## DISCUSSION

Typically, an individual must be receiving federal SSI in order to be eligible for an SSI State Supplement payment. See Wis. Stat. §§49.77 and 49.775; *SSI Administration Handbook* §2.1.1. Because receipt of federal SSI is a condition of eligibility for State SSI payments, when the Social Security Administration (SSA) terminates an individual's federal SSI, the State of Wisconsin terminates that individual's State SSI cash benefit. *Id.* at 2.1.8.

Wis. Admin. Code Ch. DHS 2 sets forth the rules the Department of Health Services ("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).

In a fair hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. To meet its burden, a preponderance of the evidence in the record must support the department's contentions.

In this case, the agency submitted a letter in response to Petitioner's appeal. That letter, authored by State SSI Analyst Melissa Sherry, set forth the following rationale for establishing a State SSI overpayment claim against Petitioner:

SSA determined the petitioner did not meet the rules for Federal SSI the month(s) of January 2022 through June 2022. Because the petitioner did not meet the rules for Federal SSI, they were not eligible to get state SSI payments . . . Because [the petitioner] got state SSI payments during the time period when they did not meet the rules for Federal SSI payments, they must repay the benefits they were not supposed to get . . .

The agency attached a screenshot from the ForwardHealth system (Attachment A) to the letter referenced above (Attachment A) as supporting evidence. The agency explained that this screenshot contains information that the State received from the Social Security Administration State Data Exchange and specifically noted: "As shown under the SSI Enrollment section, the Jurisdiction State was changed from

WI to AZ (Arizona) for January 2022 through June 2022 making member ineligible for SSI payment in WI.”

The agency thus gave two different reasons for Petitioner’s overpayment: (1) because she was no longer eligible for federal SSI from January 2022 through June 2022, and (2) because her “jurisdiction state” changed during that time period. There is however insufficient evidence to establish that either of those assertions are correct.

The ForwardHealth screen marked as Attachment A by the agency indicates that Petitioner was in “current pay” status from January 2022 through June 2022 and lists a “federal paid amount” and “federal gross amount” of \$184. That amount was presumably her monthly federal SSI benefit amount from January 2022 through June 2022 and there is no documentation indicating that the SSA retroactively terminated her federal SSI benefits for those months. Moreover, Petitioner testified that she received federal SSI benefits without interruption during that time period. There is thus no evidence showing that she was ineligible for federal SSI from January 2022 through June 2022.

The State of Wisconsin’s *SSI Administration Handbook* provides that an individual may become ineligible for State SSI not only when federal SSI is terminated but also when the individual moves out of state. See *SSI Administration Handbook* Release 11-01, Sec. 2.1.8. The agency explained that the information it received from SSA indicated that Petitioner’s “jurisdiction state” changed to Arizona from January 2022 through June 2022. The agency did not explain what that term means but it is reasonable to infer that the state is contending that Petitioner moved out of Wisconsin during those six months.

Petitioner appeared at hearing and offered sworn, credible, detailed testimony that although she left Wisconsin in December 2021, it was her intention to return in March 2022 (though her return was unexpectedly delayed until June 2022 due to circumstances beyond her control). There is thus no dispute that Petitioner was outside of Wisconsin from January 2022 through some date in June 2022 but she never intended to move to Arizona. Based on the evidence in this hearing record, Petitioner was temporarily absent from but still a resident of Wisconsin. I therefore find that the agency has not met its burden to prove that Petitioner was overpaid State SSI from January 2022 through June 2022.

### CONCLUSIONS OF LAW

There is insufficient evidence in the record to establish that Petitioner was ineligible for State SSI from January 2022 through June 2022 and there is thus insufficient evidence to establish that she was overpaid \$502.68 of State SSI benefits during that time period.

**THEREFORE, it is**

**ORDERED**

That the matter is remanded to the agency to rescind the \$502.68 State SSI overpayment claim and to send Petitioner written notice confirming that it has done so. The agency shall comply with these instructions 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, 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.

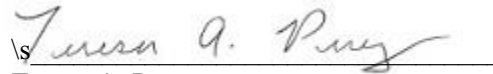
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

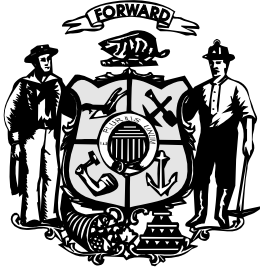
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision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



Teresa A. Perez  
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 18, 2023.

Division of Medicaid Services  
State SSI