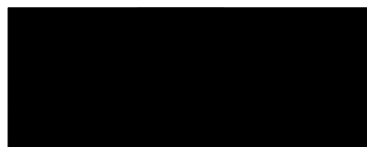




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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION
Case #: SSO - 211439

PRELIMINARY RECITALS

Pursuant to a petition filed on December 14, 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 Medical Assistance (MA), a hearing was held on January 31, 2024, by telephone.

The issues for determination are whether the agency properly determined that Petitioner was overpaid State SSI benefits received for the time period September 2022 through August 2023 and if so, whether the Department may recoup those funds from Petitioner while a related appeal pending in front of the Social Security Administration.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
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 Vilas County who received monthly State SSI / Caretaker Supplement payments of \$179.77 for the months of September 2022 through August 2023.
2. On an unspecified date, the Social Security Administration (“SSA”) determined that Petitioner was not eligible for federal SSI payments that she received from April 2021 through August 2023.
3. On or about August 11, 2023, Petitioner appealed SSA’s determination and/or filed a request for a waiver.
4. On October 12, 2023, SSA notified Petitioner in writing that she would receive her full federal SSI benefit of \$667 pending resolution of the appeal she filed with SSA. SSA is thus not currently withholding any funds from her federal monthly SSI benefit payment.
5. On November 23, 2023, the Department of Health Services, Division of Medicaid Services (“the department”) issued a *Notice of State SSI and/or Caretaker Supplement Overpayment* to Petitioner informing her that, because SSA had paid her federal SSI benefits and later decided that she was not due those benefits, the Department decided that she was not eligible for \$2,157.24 in State SSI / Caretaker Supplement benefits that she received for the time period September 2022 through August 2023. The notice also stated that the Department would withhold 10% of her State SSI / Caretaker Supplement benefit every month beginning December 18, 2023.
6. On December 19, 2023, the Division of Hearings and Appeals received a request for fair hearing regarding the State SSI / Caretaker Supplement overpayment determination.
7. The Department suspended recoupment from Petitioner’s State SSI / Caretaker Supplement pending the outcome of this hearing.

DISCUSSION

Typically, an individual must be receiving federal SSI in order to be eligible for a State SSI payment or State SSI-E 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 or SSI-E payments, when the Social Security Administration (SSA) terminates an individual’s federal SSI, the State of Wisconsin terminates that individual’s State SSI and State SSI-E cash benefits. *Id.* at 2.1.8.

Wis. Admin. Code Ch. DHS 2 sets forth the rules that 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). The recovery period for incorrectly paid benefits is limited to one year prior to the date that the overpayment is discovered. See Wis. Admin. Code §DHS 2.04(1)(b).

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, explained that Petitioner received State SSI payments from September 2022 through August 2023, and that the Department was later notified by SSA that Petitioner was not eligible for federal SSI during that time period.

The department included a copy of a printout from the State of Wisconsin's ForwardHealth database and a printout from the Social Security Data Exchange. Together those printouts show that Petitioner was paid \$179.77 in monthly State SSI benefits during the time period in question and that SSA retroactively terminated her eligibility. Based on the law and the supporting documentation provided, I find that the Department correctly determined that Petitioner was overpaid State SSI.

The Department is however limited by the relevant administrative code to recovering benefits issued twelve months prior to the discovery date. See Wis. Admin. Code §DHS 2.04(1)(b). Neither the administrative code nor the department's State SSI policies include a definition of "date of discovery."

FoodShare policy defines discovery date as the date of the establishment of an overpayment claim and issuance of an overpayment notice. See *FoodShare Wisconsin Handbook* §7.3.15. FoodShare policies are obviously not controlling in this case, but FoodShare, like State SSI, is administered by the department. In the absence of any other directly applicable policy or legal authority, those policies provide a reasonable framework and I find that the discovery date in this case was November 23, 2023, the date of the overpayment notice.

Here, the twelve month recovery time period is November 2022 through November 2023. The department may therefore recoup the State SSI and Caretaker Supplement benefits paid to Petitioner for November 2022 through August 2023 but may not recoup for benefits paid in September 2022 or October 2022.

Petitioner argued that the Department should not recoup from her State SSI / Caretaker Supplement while she has an ongoing appeal with the SSA and while SSA is not recouping from her federal SSI benefit. Her argument is certainly a reasonable one; however, the administrative code provisions that govern State SSI overpayments do not provide for the suspension of recovery efforts when there is an ongoing SSA appeal. See Wis. Admin. Code §§DHS 2.04 – 2.06. As an administrative law judge, I must apply the laws as they are written and the relevant legal authority here does not grant me the discretion to order the Department to pause its efforts to recover Petitioner's State SSI overpayment. I note that if SSA determines that Petitioner was in fact eligible for federal SSI benefits from November 2022 through August 2023, the Department would be required to disgorge those funds to Petitioner.

Finally, I note to Petitioner that she may file a request for a waiver of the State SSI / Caretaker Supplement with the Department at any time as set forth in the overpayment notice that the Department previously sent to her.

CONCLUSIONS OF LAW

- (1) The Department correctly established a State SSI / Caretaker Supplement overpayment claim against Petitioner for the months of November 2022 through August 2023 because the Social Security Administration issued a decision that Petitioner was not eligible for federal SSI that she received in those months.
- (2) The Department may recover overpaid State SSI benefits for up to twelve months prior to the discovery date of November 23, 2023; the Department must therefore reduce the overpayment claim against Petitioner by \$359.54 which is equal to the benefits she received for the months of September 2022 and October 2022.

THEREFORE, it is

ORDERED

That the matter is remanded to the Department to exclude the months of September 2022 and October 2022 from the overpayment claim time period, to reduce Petitioner's overpayment claim amount accordingly, and to send her notice that it has made that adjustment. The Department must comply with this order within ten days of the date of this hearing decision. In all other respects, Petitioner's appeal is 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 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).

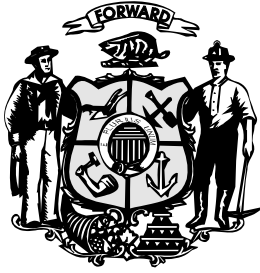
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of April, 2024



\s _____

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on April 2, 2024.

Division of Medicaid Services
State SSI

