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 Details: Complaints

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

STATE OF WISCONSIN

• CIRCUIT COURT • DANE COUNTY
Civil Division

SEP 15 11 08 AM '03

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

CIRCUIT COURT
DANE COUNTY, WI
Petitioner,

03CV2745

-vs-

Case No.: _____

Case Code: 30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
PENNY THOMAS, (CCA)(Associate Warden Programs, Program Review
Supervisor);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
MATHEW J. FRANK, (Secretary Department of Corrections);

Respondent(s),

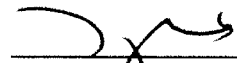
**MOTION/PETITION FOR DECLARATORY JUDGMENT
PROCESS SERVICE ORIGINALS**

FOR

(J.C.R.A.R.)

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

*North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122*

STATE OF WISCONSIN

• CIRCUIT COURT •

DANE COUNTY

Civil Division

SEP 15 11 00 AM '03

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

CIRCUIT COURT
DANE COUNTY, WI
Petitioner,

**Motion to Enjoin
Respondent In
In Declaratory
Judgment Action**

-vs-


Case No.: 03CV2745
Case Code: 30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
PENNY THOMAS, (CCA)(Associate Warden Programs, Program Review
Supervisor);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
MATHEW J. FRANK, (Secretary Department of Corrections);

Respondent(s),

The Petitioner, Jesse Hardy Swinson, appearing Pro-Se and reserving his right to challenge the court's jurisdiction, hereby and herein moves this honorable court for an order enjoining additional parties. Although the petitioner believes that he has complied with the mandates of the statute regarding service and inclusion of the Joint Committee on Legislative Organization, herein-after (J.L.C.O.) and Joint Committee for Administrative Rules, herein-after (J.C.R.A.R.) by virtue of naming the attorney general and former attorney general as respondents in this action. However, the statute is ambiguous in this area, so to comply with the covenants set fort in *Richards -v- Young, 150 Wis. 2d 549, 441. N.W. 2d 742(Wis. 1989)*, I ask the court to issue an order enjoining the necessary parties and order effect of service of the documents thereupon. This motion is brought pursuant to *Wis. Stats., § 227.41(11) and 806.04(5)*

Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

**North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122**

Subscribed and sworn to before me,
this 16 day of July, 2003.

Darla K Radem #03007552
(Notary Public) (State of Oklahoma)

My commission expires: June 3, 2007

STATE OF WISCONSIN

• CIRCUIT COURT •
Civil Division

DANE COUNTY

SEP 15 11 01 AM '03

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

CIRCUIT COURT
DANE COUNTY WI
Petitioner,

-vs-

SUMMONS

Case No.:

00CV2745

Case Code:

30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
PENNY THOMAS, (CCA)(Associate Warden Programs, Program Review
Supervisor);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
MATHEW J. FRANK, (Secretary Department of Corrections);
Respondent(s),

THE STATE OF WISCONSIN:

To the individual Respondent'(s) named above and specifically;

(J.C.R.A.R.)JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
Room 15, State Capitol
P.O. Box 7882
Madison, Wisconsin 53708-8952

You are hereby notified that the above named petitioner has filed a lawsuit or other legal action against you, your agency and or firm. The complaint and attached exhibit's states the nature, content and basis of the legal action to which an answer is required.

Within twenty (20) days of receiving this summons, you and or your representative'(s) as such, must respond with a written answer as that term is set forth in Chapter 802 of Wisconsin Statutes. The court may reject or disregard an answer that does not follow the requirements of the statute. You may have an

attorney help or represent you. The answer must be sent to or delivered to the court, whose address is;


Clerk, Circuit Court Dane County
City-County Building, Room GR-10
210 Martin Luther King Blvd.
Madison, Wisconsin 53709

And To

Jesse Hardy Swinson • 372937
North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

If you do not provide a proper answer within twenty (20) days of this summons, the court may grant judgment against you, your agency and or firm and award for money damages and or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of your property.

Dated this 15TH day of July 2003;



Jesse Hardy Swinson • 372937

North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

Subscribed and sworn to before me,

this 16 day of July, 2003.

Darla K Raudem #03007552
(Notary Public) (State of Oklahoma)

My commission expires: June 3, 2007

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

Petitioner,

¹Petition for
Declaratory
Judgment

-VS-

Case No.: **03IP0101**

Case Code: 30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
PENNY THOMAS, (CCA)(Associate Warden Programs, Program Review
Supervisor);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
MATHEW J. FRANK, (Secretary Department of Corrections);

Respondent(s),

The Petitioner, Jesse Hardy Swinson, appearing Pro-Se, and reserving his right to challenge the court's jurisdiction, hereby and herein moves this honorable court for a Declaratory Judgment compelling the Department Of Corrections to reclassify the petitioner to a track and security classification equitable to the offender's crime, criminal record, institution adjustment, program participation and conduct history, based upon the intent and spirit of

¹ This document has been prepared as a petition/Motion for Declaratory Judgment due to the nature of the issues brought forth. In Wisconsin, Certiorari and Habeas Corpus have been rejected as improper vehicles for this nature of complaint. {see Richards -v- Leik, McCaughtry, 175 Wis. 2d 446, 499 N.W. 2d 276, (Wis.App. 1993) The issues and implications of this action will warrant and require extensive discovery and actions beyond the breath of those vehicles. The court has the inherent power to reclassify the document/complaint to the appropriate form due to the fact that the petitioner is a Pro-Se layman and has no formal legal training, and should so do., {see Bin-Rilla -v- Israel, 113 Wis 2d 514,521, 335 N.W. 2d 384, 389}

the criteria set forth in Chapter DOC 302. The petitioner contends that his classification and subsequent reviews of said classification were based upon Sham Proceedings as delineated in *Schacht -v Wisconsin Department of Corrections, et al.*, 175 F3d 497 (7th Cir 1999)

"We agree that sham procedures do not satisfy due process and that, for purposes of Rule 12(b)(6), Schacht stated a claim. "No matter how complete the panoply of procedural devices which protect a particular liberty or property interest, due process also requires that those procedures be neutrally applied." *Ciechon*, 686 F2d at 517, (petitioner emphasis added)

The department must utilize as a benchmark Wis. Stat., § 227.11 for its rules to have force under the statute from which they are promulgated.

Section (2)(a)

Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation.

Section (2)(c)

Each agency authorized to exercise discretion in deciding individual cases may formalize the general policies evolving from its decisions by promulgating policies as rules which the agency shall follow until they are amended or repealed. A rule promulgated in accordance with this paragraph is valid only to the extent that the agency has discretion to base an individual decision on the policy expressed in the rule.

Petitioner further contends that the risk rating manual's promulgation, if in existence, was based not on sound rule making procedures, but deliberate intent to circumvent the legislature's desire and intent regarding the parole-ability of an inmate within the 25% guidelines it set forth in *Wis. § 304 and 302.045*.

Petitioner further asserts that the track assignments, parlayed by the classification department, amount to the precursor of a determinate sentence by

locking one into a particular custody rating for a determinate time period.

Petitioner further moves the court to compel the Department of Corrections to disclose all historical documentation comprising rational basis for the promulgation of its rules governing classification, together with any and all executive directives in order or memo form.

And; to disclose the elements of its risk rating and track assignment system, its promulgation documentation, in particular the data detailing the weight given to a specific element, the basis for assigning such weight as it relates to the track assigned.

And; the impact its risk rating or track assignment bears upon the parole-ability of an inmate within the minimum time specified by *Wis. § 304 and 302.045*.

And; the relationship of the assigned track to a particular security classification, together with the basis of its promulgation.

And; delineate and disclose any and all promulgation records supporting each and every interpretation that the classification departments use in the administration of DOC 302.01, 302.02, 302.03, 302.04, 302.05, 302.06, 302.07, 302.08, 302.09, 302.10, 302.11, 302.12, 302.13, 302.14, 302.15, 302.16, 302.17, 302.18, 302.19, 302.20, 302.205, 302.21, 302.22, 302.23, 302.24, 302.25, 302.26, 302.27, 302.28, 302.29, 302.30, 302.31, 302.32, 302.045, and subsections incorporated there-under.

And; full disclosure of any and all elements used in the classification of the petitioner, including but not limited to, community reaction to the petitioner's crime, together with a chronological time line that equates the commission of the crime to the gathering of said assessment.

And; definition and support for the director's determination of time likely to be served by petitioner.

And; demonstrate that the track assignation rules were promulgated properly and show that they have no effect upon the petitioner's liberty interest created by the parole statute *Wis. § 304 and 302.045*.

This motion is brought as an extraordinary measure pursuant to *Wis. § 806.04, stats., ("Uniform Declaratory Judgments Act"), the EQUAL PROTECTION CLAUSE, THE 8TH AND 14TH AMENDMENTS to the U.S. CONSTITUTION*, and the covenants delineated in *Loy -v- Bunderson, 107 Wis.2d 400, 320 N.W.2d 175(1982) and Wis. § 227.10.*

JURISDICTION

PURSUANT to *Wis. Stats., § 806.4*, courts of record shall have rights of power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

VENUE

Venue is properly brought in this court based upon the following facts, That Roger Blackshear, a CCA Employee, acts as Program Review Committee Chair under the auspices of a contract negotiated and administered by the Wisconsin Department of Corrections. That Penny Thomas, a CCA Employee, acts as Program Review Committee Supervisor under the auspices of a contract negotiated and administered by the Wisconsin Department of Corrections. That Linda Fait is department of corrections classification specialist for out-of-state inmates. That Steven M. Puckett is the Director of Classification for the Department of Corrections, seated in Madison Wisconsin. That Mathew J. Frank is Secretary of the Department of Corrections. This circuit court is the closest authorized trier of fact to the underlying controversy.

AS GROUNDS, Petitioner states and asserts the foregoing facts:

1] The petitioner was found guilty and sentenced to a term of 29 years for violation of *Wis. § 943.20(1)(d)(c) and § 946.49(1)(b).*

2] The petitioner is a first time offender.

- 3] The petitioner is fifty-five (55) years old and in good health.
- 4] The petitioner is a resident of the state of Texas.
- 5] The petitioner has completed all programs required by the Department of Corrections.
- 6] The petitioner has no conduct reports in the past 36 months.
- 7] The petitioner has maintained an excellent work record during his tenure at the North Fork Correctional Facility.
- 8] Petitioner was terminated from the intensive sanctions program on 9/7/99 by administrative directive and thus made ineligible for the challenge incarceration program under the exemption created in *section (4) of Wis. Stats., 302.045*.
- 9] The petitioner has been recommended for classification reduction in the 2 previous social worker evaluations.
- 10] The petitioner is a non violent offender with no previous criminal history.
- 11] The petitioner is classified as a track 5 inmate and is, as required by PRC directive, to serve 50% of sentence to MR as a maximum security inmate, in effect, creating a determinate sentence, violating the liberty interest created by *Wis. § 304 and 302.045*.
- 12] Unduly, the petitioner is being punished harshly due to the interpretation of his sentence structure by the classification department.

13] Unduly, the petitioner is being treated indifferently, from other offenders convicted of the same crimes by the classification department's interpretation of the intent of the 302.

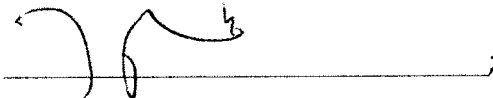
14] The PRC committee has over-ridden each recommendation stating that not enough time served.

15] The petitioner has exhausted all of his administrative remedies; although not predicate in this action, he has made a request for review of decision upon the completion of each program review. Petitioner has complied with mandates of *Wis. Stats., § 227.41 & 42* by virtue of his request for review by the director of the classification. Said review fulfills the requirement of requesting a policy statement and fulfils the exhaustion of administrative remedies requirement delineated *in State Ex Rel. Hensley -v- Endicott, 238 Wis.2d 649, 618 N.W.2d 245.*

16] The classification department's interpretation and implementation of that interpretation of *Wis. Stats., § 302* violates the petitioners *DUE PROCESS AND EQUAL PROTECTION* rights as guaranteed by the *U.S. CONSTITUTION* and *further deprives him of substantial LIBERY INTERESTS.*

Dated and Executed this 12th Day of July 2003

Respectfully Submitted:



Jesse Hardy Swinson • 372937

*North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122*

SERVED PERSONAL SUBSTITUTE AT 11:20A M
THIS 21 DAY OF Oct 2003
AT THE Co OF Madison
BY GARY H. HAMBLIN
Deputy Sheriff

STATE OF WISCONSIN

• CIRCUIT COURT • DANE COUNTY
Civil Division

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

Petitioner,

-vs-

03-CV-2208
Case No.: 03-IP-78
Case Code: 30701

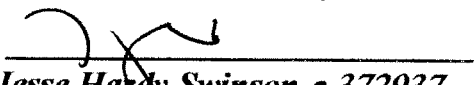
ROGER BLACKSHIER, (A CCA Employee)(Program Review Committee Chair);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
CAPTIAN S. E. GRADY, (Boot Camp Administrator);
MATHEW J. FRANK, (Secretary Department of Corrections);
LENARD WELLS, (Parole Commissioner);
PEGGY A. LAUTENSCHLAGER, (Attorney General);
JAMES DOYLE, (Former Attorney General, Governor);
Respondent(s),

***MOTION/PETITION FOR DECLARATORY JUDGMENT
PROCESS SERVICE ORIGINALS***

FOR
(J.C.R.A.R.)

✓ **JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES**

Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

*North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122*

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

Petitioner,

-vs-

**Motion to Enjoin
Respondent(s) In
In Declaratory
Judgment Action**

03-CV-2208

Case No.: 03-IP-78

Case Code: 30701


**ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
CAPTIAN S. E. GRADY, (Boot Camp Administrator);
MATHEW J. FRANK, (Secretary Department of Corrections);
LENARD WELLS, (Parole Commissioner);
PEGGY A. LAUTENSCHLAGER, (Attorney General);
JAMES DOYLE, (Former Attorney General, Governor);**

Respondent(s),

The Petitioner, Jesse Hardy Swinson, appearing Pro-Se and reserving his right to challenge the court's jurisdiction, hereby and herein moves this honorable court for an order enjoining additional parties. Although the petitioner believes that he has complied with the mandates of the statute regarding service and inclusion of the Joint Committee on Legislative Organization, herein-after (J.L.C.O.) and Joint Committee for Administrative Rules, herein-after (J.C.R.A.R.) by virtue of naming the attorney general and former attorney general as respondents in this action. However, the statute is ambiguous in this area, so to comply with the covenants set fort in *Richards -v- Young, 150 Wis. 2d 549, 441. N.W. 2d 742(Wis. 1989)*, I ask the court to issue an order enjoining the necessary

parties and order effect of service of the documents thereupon. This motion is brought pursuant to *Wis. Stats., § 227.41(11) and 806.04(5)*.


Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

*North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122*

Subscribed and sworn to before me,
this 16 day of July, 2003.



*Paula K. Randem #03007552
(Notary Public) (State of Oklahoma)*

My commission expires: June 3, 2007

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

Petitioner,

Motion for
Declaratory
Judgment

03-CU-2208

-vs-

Case No.: 03-IP-78

Case Code: 30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
CAPTIAN S. E. GRADY, (Boot Camp Administrator);
MATHEW J. FRANK, (Secretary Department of Corrections);
LENARD WELLS, (Parole Commissioner);
PEGGY A. LAUTENSCHLAGER, (Attorney General);
JAMES DOYLE, (Former Attorney General, Governor);

Respondent(s),

The Petitioner, Jesse Hardy Swinson, appearing Pro-Se and reserving his right to challenge the court’s jurisdiction, hereby and herein moves this honorable court for a Declaratory Judgment and order declaring; either the statute, in it’s entirety unconstitutional due to age discrimination. Or in the alternative hold mute any age limit set forth in the statute. Or declare separate criteria exclusive of age and allow the petitioner access to an equal opportunity for early parole as if he were under the age of 30 years. Or issue an order directing the department of corrections to allow petitioner immediate access to the program. This motion is brought pursuant to *Wis. § 806.04, stats.*, (“*Uniform Declaratory Judgments Act*”), the EQUAL PROTECTION CLAUSE of the U.S. CONSTITUTION and the covenants delineated in Loy -v- Bunderson, 107 Wis.2d 400, 320 N.W.2d 175(1982)

JURISDICTION

PURSUANT to Wis. Stats., § 806.4 courts of record shall have rights of power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

VENUE

Venue is properly brought in this court based upon the following facts, that Mathew J. Frank is secretary of the department of corrections. That Peggy Lautenschlager is the attorney general of Wisconsin. That Lenard Wells is the parole commissioner of Wisconsin. That Captain J. E. Grady is the boot camp program administrator. That Linda Fait is department of corrections classification specialist for out-of-state inmates. That James Doyle is the former attorney general, and now Governor of Wisconsin. This circuit court is the closest authorized trier of fact to the underlying controversy.

AS GROUNDS, Petitioner states and asserts the foregoing facts:

1] The petitioner was found guilty and sentenced to a term of 29 years for violation of *Wis. § 943.20(1)(d)(c) and § 946.49(1)(b)*.

2] The petitioner is a first time offender and not subject to exclusions mandated by the *Wis. § 302.045 in sec. (2)(c)*

3] The petitioner is fifty five (55) years old and in good health.

4] The petitioner is being denied the possibility of early release, under the same criteria as an offender under the age of 30, by the department of corrections denial of access to the boot camp program.

5] The arbitrary age limit of 30 years is supplantive of the original intent of the statute to provide a liberty interest for juvenile offenders and renders the statute open to many interpretations of the designate term youthful.

6] The statute creates a designate group within the general prison population and denies access to its inherent liberty interest based solely on an arbitrary age limit.

7] The department of corrections and the state of Wisconsin obtain federal funding from the federal government for its prison system under color of providing equal protection of the law as mandated by U.S.C.42 § 6102.

Quoting 18 § 6102

" Pursuant to regulations prescribed under section 6103 of this title, and except as provided in section 6103(b) and section 6103(c) of this title, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance".

8] Petitioner was terminated from the intensive sanctions program on 9/7/99 by administrative directive and thus made ineligible for the challenge incarceration program under the exemption created in *section (4) of Wis. Stats., 302.045*.

9] The department of corrections provides no access to a program of equal gravity concerning early release to offenders above the age of 30 years since its administrative termination of the intensive sanctions program.

10] The petitioner has exhausted all of his administrative remedies; although not predicate in this action, in that he has made a request for admission to the program and been denied based on age. Petitioner has complied with mandates of *Wis. Stats., § 227.41* by virtue of his request for admittance into the program. Exhaustion of administrative remedies requirement delineated in *State Ex Rel. Hensley –v- Endicott, 238 Wis.2d 649, 618 N.W.2d 245*.

11] The petitioner has completed all of the programs mandated by the department of corrections as referred to by Captain Grady in his response regarding admittance into the program.

12] The AS IS standing of *Wis. Stats., 302.045* violates the petitioners DUE PROCESS AND EQUAL PROTECTION rights as guaranteed by the U.S. Constitution.

Dated this 8th Day of May 2003

Respectfully Submitted:

 _____;

Jesse Hardy Swinson 372937

*North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122*

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,

Petitioner,

03-CV-2208

SUMMONS

-vs-

Case No.: 03-IP-78
Case Code: 30701

ROGER BLACKSHIER, (A CCA Employee)(Program Review Committee Chair);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
CAPTIAN S. E. GRADY, (Boot Camp Administrator);
MATHEW J. FRANK, (Secretary Department of Corrections);
LENARD WELLS, (Parole Commissioner);
PEGGY A. LAUTENSCHLAGER, (Attorney General);
JAMES DOYLE, (Former Attorney General, Governor);

Respondent(s),

THE STATE OF WISCONSIN:

To the individual Respondent'(s) named above and specifically;

(J.C.R.A.R.)JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES
Room 15, State Capitol
P.O. Box 7882
Madison, Wisconsin 53708-8952

You are hereby notified that the above named petitioner has filed a lawsuit or other legal action against you, your agency and or firm. The complaint and attached exhibit's states the nature, content and basis of the legal action to which an answer is required.

Within twenty ⁴⁵~~(20)~~ days of receiving this summons, you and or your representative'(s) as such, must respond with a written answer as that term is set forth in Chapter 802 of Wisconsin Statutes. The court may reject or disregard an

answer that does not follow the requirements of the statute. You may have an attorney help or represent you. The answer must be sent to or delivered to the court, whose address is;


Clerk, Circuit Court Dane County
City-County Building, Room GR-10
210 Martin Luther King Blvd.
Madison, Wisconsin 53709

And To

Jesse Hardy Swinson • 372937
North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

If you do not provide a proper answer within twenty (20) days of this summons, the court may grant judgment against you, your agency and or firm and award for money damages and or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of your property.


Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

Subscribed and sworn to before me,
this 16 day of July, 2003.



Dula K Rarden #03007552
(Notary Public) (State of Oklahoma)

My commission expires: June 3, 2007

CERTIFICATE OF AND PROOF OF SERVICE

TO: *JESSE HARDY SWINSON • 372937*

North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

From: Dane County Sheriff's Office
210 Martian Luther King Blvd.
Madison, Wisconsin 53709-0002

Re: **STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,**

Petitioner,

-vs-

63-CV-2208
Case No.: 03-IP-78
Case Code: 30701

**ROGER BLACKSHIER, (A CCA Employee)(Program Review Committee Chair);
LINDA FAIT, (Classification Specialist);
STEVEN PUCKET, (Director of Classifications);
CAPTIAN S. E. GRADY, (Boot Camp Administrator);
MATHEW J. FRANK, (Secretary Department of Corrections);
LENARD WELLS, (Parole Commissioner);
PEGGY A. LAUTENSCHLAGER, (Attorney General);
JAMES DOYLE, (Former Attorney General, Governor);**

Respondent(s),

I, _____, acting in the capacity of _____, do hereby that on this _____ day of _____, 2003, serve the below listed documents on **(J.C.R.A.R.) JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES OR ITS DESIGNEE, _____**, holding the title of _____, located at the Room 15 South, State Capitol, P.O. Box 7882 • Madison, Wisconsin 53708-8952.

I have forwarded a copy of this certificate to the petitioner of the above captioned case number, _____ at the above named correctional facility on this _____ day of _____, 2003.

DOCUMENTS SERVED

- 1] Motion/Petition for Declaratory Judgment
- 2] Order waiving costs and fees.
- 3] Summons

Person Serving Documents

STATE OF WISCONSIN *ex rel.*,
JESSE HARDY SWINSON,
Petitioner,

-vs-

**Motion/Demand
for Jury Trial
In Declaratory
Judgment Action**

03-CV- 2208

Case No.: 03-IP-78

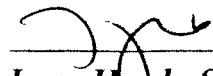
Case Code: 30701

ROGER BLACKSHEAER, (CCA)(Program Review Committee Chair);
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LENARD WELLS, (Parole Commissioner);
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JAMES DOYLE, (Former Attorney General, Governor);

Respondent(s),

The Petitioner, Jesse Hardy Swinson, appearing Pro-Se and reserving his right to challenge the court's jurisdiction, hereby and herein moves this honorable to order a jury trial in the matters at bar. Issue such orders as necessary granting petitioner's motion for a jury trial on the facts brought before the bar in this matter. A trial before a jury in a matter of this magnitude is vital to bring to the public the awareness needed for an understanding of the disparate indifferences fostered by the agencies under attack here. This motion is brought pursuant to *Wis. Stats., § 227.41(11) and 806.04(5)*

Dated this 15th day of July 2003;



Jesse Hardy Swinson • 372937

North Fork Correctional Facility
1605 East Main Street
Sayre, Oklahoma 73662-3122

Subscribed and sworn to before me,
this 16 day of July, 2003.

Darla K. Raden #03007552
(Notary Public) (State of Oklahoma)

My commission expires: June 3, 2007

SERVED PERSONAL SUBSTITUTE AT 11:30A M

THIS 11 DAY OF Sept 2003

AT THE City OF Madison

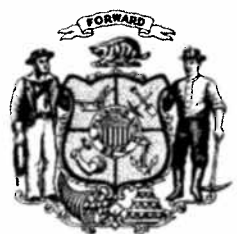
GARY H. HAMBLIN

BY _____

Deputy Sheriff



WISCONSIN STATE LEGISLATURE



STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

DANE COUNTY

WOODMAN'S FOOD MARKET, INC.
D/B/A WOODMAN'S FOOD MARKET GAS STATION
a Wisconsin corporation,
2919 N. Lexington
Janesville, WI 53545,

Plaintiff,

Case No. 04CV2607

v.

Declaratory Judgment: 30701

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION,**
State of Wisconsin
Office of the Secretary of the Wisconsin Department
of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT.

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

and

**ROD NILSESTUEN, SECRETARY OF THE
WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**
State of Wisconsin
Office of the Secretary of the Wisconsin Department
of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718,

Defendants.

2004 AUG 23 PM 3:12
DANE CO. CIRCUIT COURT

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is City-County Building, 210 Martin Luther King, Jr. Blvd., Madison, WI 53709 and to Murphy Desmond S.C., Plaintiff's attorneys, whose address is 2 E. Mifflin St., P.O. Box 2038, Madison, WI 53701-2038. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of auxiliary aids or services because of a disability, call (608) 266-4311 (TDD (608) 266-4625) and ask for the Court ADA Coordinator.

Dated this 23 day of August, 2004.

MURPHY DESMOND S.C.

Attorneys for Woodman's Food Market,
Inc. d/b/a Woodman's Food Market Gas
Station

By: 

John A. Kassner

State Bar Number: 1014336

Jennifer M. Krueger

State Bar Number: 1030962

2 E. Mifflin Street, Suite 800

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH _____

DANE COUNTY

WOODMAN'S FOOD MARKET, INC.
D/B/A WOODMAN'S FOOD MARKET GAS STATION
a Wisconsin corporation,
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2811 Agriculture Drive
Madison, WI 53718

and

**ROD NILSESTUEN, SECRETARY OF THE
WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**
State of Wisconsin
Office of the Secretary of the Wisconsin Department
of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718,

Defendants.

THIS IS AN AUTHENTICATED COPY OF THE
ORIGINAL DOCUMENT FILED WITH THE DANE
COUNTY CLERK OF CIRCUIT COURT

JUDITH A. COLEMAN
CLERK OF CIRCUIT COURT

2004 AUG 23 PM 3:12
DANE CO. CIRCUIT COURT

COMPLAINT

Plaintiff, Woodman's Food Market, Inc. d/b/a Woodman's Food Market Gas Station ("Woodman's"), by Murphy Desmond S.C., its attorneys, by John A. Kassner and Jennifer M. Krueger, as and for its Complaint against defendants, Wisconsin Department of

Agriculture, Trade and Consumer Protection and Rod Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection (collectively, hereinafter referred to as the "DATCP"), hereby alleges as follows:

1. Woodman's is a corporation duly organized and existing under the laws of the State of Wisconsin, with its principal place of business located at 2919 N. Lexington, Janesville, Wisconsin 53545 and operates a gas station and convenience store.

2. The Wisconsin Department of Agriculture, Trade and Consumer Protection is a Wisconsin agency with a principal office located at 2811 Agriculture Drive, Madison, Wisconsin 53718.

3. Rod Nilsestuen is the Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection with a principal office located at 2811 Agriculture Drive, Madison, Wisconsin 53718.

NATURE OF ACTION

4. This is an action for a declaratory judgment pursuant to Wis. Stat. §§ 806.04 and 227.40.

5. The purpose of this action is to obtain a judicial declaration that DATCP violated constitutional provisions in promulgating Wis. Admin. Code § ATCP 105.009(5) and unlawfully exceeded its authority in promulgating Wis. Admin. Code § ATCP 105.009(5).

GENERAL ALLEGATIONS

6. The Unfair Sales Act is governed by the provision of Wis. Stat. § 100.30.

7. The purpose of Wis. Stat. § 100.30 is as follows:

(1) Policy. The practice of selling certain items of merchandise below cost in order to attract patronage is generally a form of deceptive advertising and an unfair method of competition in commerce. Such practice causes commercial dislocations, misleads the consumer, works back against the farmer, directly burdens and obstructs commerce, and diverts business from dealers who maintain a fair price policy. Bankruptcies among merchants who fail because of the competition of those who use such methods result in unemployment, disruption of leases, and nonpayment of taxes and loans, and contribute to an inevitable train of undesirable consequences, including economic depression.

8. Wis. Stat. § 100.30 prohibits the sale of motor vehicle fuel at a price less than the cost of the fuel as further defined by the statute.

9. Wis. Stat. § 100.30 provides fuel retailers with a mandatory formula to calculate the cost of their fuel.

10. Wis. Admin. Code § ATCP 105.009(5) reads as follows:

Credit card promotions meeting competition. (a) Pursuant to s. 100.30(6)(a)7., Stats., a motor fuel retailer may in good faith offer a credit card promotion to meet, but not beat, a credit card promotion that any person offers on credit card purchases of motor fuel from a competing retailer. A retailer may not claim to be meeting competition if the retailer offers the credit card promotion for more than 180 days after the competing credit card promotion is discontinued.

(b) If a motor fuel retailer competes in this state with retailers who benefit from a statewide or regional credit card promotion, the retailer may offer a credit card promotion under par. (a) at any or all of its retail locations in that statewide or regional market, regardless of whether the competition occurs at every one of its retail locations in that market.

(c) A retailer offering a credit card promotion under par. (a) shall give the department written notice of that promotion, and of any material change in the general terms of that promotion. The retailer notice shall include all the following:

1. The retailer's name, and any trade name under which the retailer offers the credit card promotion.

2. The general terms, conditions and geographic scope of the credit card promotion.
3. A description of the credit card promotion that the retailer is purporting to meet, including the person offering the promotion, the general terms of the promotion, and the identity and geographic distribution of competing motor fuel retailers who are benefiting from the promotion.

11. Under Wis. Admin. Code § ATCP 105.009(5), fuel retailers may offer an additional discount to consumers who pay for fuel using a credit card (“Credit Card Discounts”) without violating Wis. Stat. § 100.30.

12. Competing fuel retailers may match the Credit Card Discounts only if the competing retailer accepts credit cards as a form of payment.

13. Wis. Admin. Code § ATCP 105.009(5) does not place a limit on the Credit Card Discounts.

14. Wis. Admin. Code § ATCP 105.009(5) does not require fuel retailers offering Credit Card Discounts to include the fees they must pay to the credit card companies in the mandatory formula under Wis. Stat. § 100.30 used to calculate the cost of their fuel.

15. The history of Wis. Admin. Code § 105.009(5) indicates that DATCP enacted the rule allowing Credit Card Discounts based on its assumption that the credit card companies (and not the fuel retailer) were offering the discount.

16. Wis. Admin. Code § ATCP 105.009(5) does not require fuel retailers offering Credit Card Discounts to prove that they are separate and distinct entities from the credit card companies, nor does it require the credit card companies to disclose income that they derive from offering credit.

17. Wis. Admin. Code § ATCP 105.009(5) allows entities that own both credit card companies and fuel retailers to offer Credit Card Discounts that exceed any income gained by the credit card company through the credit card purchase.

18. At all times material to this complaint, Woodman's was, and still is, engaged in the business of selling motor vehicle fuel.

19. Woodman's does not accept credit cards as a form of payment for motor vehicle fuel.

20. Wis. Admin. Code § ATCP 105.009(5) prevents Woodman's from effectively competing with fuel retailers that offer Credit Card Discounts.

FIRST CAUSE OF ACTION
Violation of Woodman's Constitutional Right to Due Process

21. Paragraphs 1 through 20 are repeated in their entirety as if fully set forth herein and are made a part of this cause of action.

22. By enacting Wis. Admin. Code § ATCP 105.009(5), the DATCP violated Woodman's constitutional due process rights under the Fourteenth Amendment to the United States Constitution and under Article I, Section 1 of the Wisconsin Constitution by:

- a. Depriving Woodman's of its ability to compete in the motor vehicle fuel marketplace because the rule forbids Woodman's from offering a cash discount to match Credit Card Discounts offered by its competitors.
- b. Depriving Woodman's of its ability to compete in the motor vehicle fuel marketplace because the rule does not require fuel retailers that

accept credit cards to include the fees they must pay to the credit card companies when they calculate the cost of their fuel.

- c. Depriving Woodman's of its ability to compete in the motor vehicle fuel marketplace because the rule allows entities that own both credit card companies and fuel retailers to offer Credit Card Discounts that exceed any income gained by the credit card company through the credit card purchase.
- d. Failing to have a reasonable basis in law, fails to promote the general public welfare and is arbitrary and capricious because the rule damages, rather than promotes, competition among motor vehicle fuel retailers.

23. DATCP's enforcement of Wis. Admin. Code § ATCP 105.009(5) interferes with, impairs and injures Woodman's legal rights and property interests.

SECOND CAUSE OF ACTION

Violation of Woodman's Constitutional Right to Equal Protection

24. Paragraphs 1 through 23 are repeated in their entirety as if fully set forth herein and are made a part of this cause of action.

25. By enacting Wis. Admin. Code § ATCP 105.009(5), DATCP has violated Woodman's constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution and under Article I, Section 1 of the Wisconsin Constitution by:

- a. Allowing fuel retailers that accept credit cards to sell fuel below cost as determined by the mandatory formula under Wis. Stat. § 100.30,

without allowing the retailers that do not accept credit cards the ability to offer a cash discount to compete with the Credit Card Discounts.

- b. Allowing fuel retailers that accept credit cards to sell fuel below the cost of the product as determined by the mandatory formula under Wis. Stat. § 100.30, without including the fees they must pay to the credit card companies when they calculate the cost of their fuel.
- c. Allowing entities that own both credit card companies and fuel retailers to offer Credit Card Discounts that exceed any income gained by the credit card company through the credit card purchase.

26. DATCP's enforcement of Wis. Admin. Code § ATCP 105.009(5) interferes with, impairs and injures Woodman's legal rights and property interests.

THIRD CAUSE OF ACTION
DATCP Exceeded Its Rulemaking Authority

27. Paragraphs 1 through 26 are repeated in their entirety as if fully set forth herein and are made a part of this cause of action.

28. Under Wis. Stat. § 93.07(1), the DATCP is authorized:

To make and enforce such regulations, not inconsistent with the law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100 which regulations shall have the force of law.

29. By enacting Wis. Admin. Code § ATCP 105.009(5), DATCP exceeded its statutory authority and substituted its own policy for that of the Wisconsin Legislature by:

- a. Adopting Wis. Admin. Code § ATCP 105.009(5) that allows fuel retailers that accept credit cards to sell motor vehicle fuel below cost in order to attract patronage in direct contravention of the stated purpose of Wis. Stat. § 100.30.
- b. Failing to place a limit on the Credit Card Discounts which destroys competition and allows entities that own both credit card companies and fuel retailers to offer Credit Card Discounts that exceed any income gained by the credit card company through the credit card purchase.
- c. Failing to provide fuel retailers that do not accept payment with credit cards a means to offer a cash discount to match the Credit Card Discounts offered by its competitors.
- d. Failing to require the inclusion of credit card fees in the calculation to determine the cost of the fuel.
- e. Failing to require the necessary procedural safeguards to ensure that fuel retailers offering Credit Card Discounts are separate entities from the credit card company.

30. The purpose of Wis. Stat. § 100.30 is to promote fair competition. However, Wis. Admin. Code § ATCP 105.009(5) destroys competition as more specifically set forth in paragraph 29.

31. DATCP's failure to abide by its statutory authority when enacting Wis. Admin. Code § ATCP 105.009(5) interferes with, impairs and injures Woodman's legal rights and property interests.

WHEREFORE, Woodman's demands judgment against DATCP:

- A. Declaring that those provisions of Wis. Admin. Code § ATCP 105.009(5) that provide for Credit Card Discounts void and unenforceable on grounds of due process;
- B. Declaring that those provisions of Wis. Admin. Code § ATCP 105.009(5) that provide for Credit Card Discounts void and unenforceable on grounds of equal protection;
- C. Declaring that the DATCP exceeded its rulemaking authority in enacting Wis. Admin. Code § ATCP 105.009(5);
- D. Awarding Woodman's the costs of this action; and,
- E. For such other and further relief that the Court deems just and equitable.

Dated this 23 day of August, 2004.

MURPHY DESMOND S.C.

Attorneys for Woodman's Food Market,
Inc. d/b/a Woodman's Food Market Gas
Station

By: 

John A. Kassner

State Bar Number: 1014336

Jennifer M. Krueger


State Bar Number: 1030962

2 E. Mifflin Street, Suite 800

P.O. Box 2038

Madison, WI 53701-2038

(608) 257-7181

 WOODWARD ENTERPRISES, LTD.
EMMETT WOODWARD, OWNER
PRIVATE INVESTIGATOR

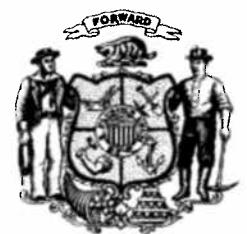
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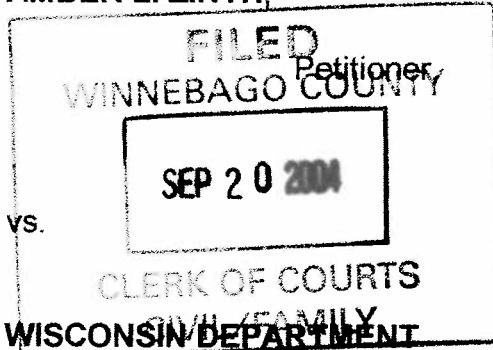
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WISCONSIN STATE LEGISLATURE



AMBER L. ZINTH,



vs.

OF HEALTH AND FAMILY SERVICES,

**PETITION FOR REVIEW OF AN
ADMINISTRATIVE DECISION**

Case No: **04CV 946 BR6**

Case Code: 30607

Respondent.

Now comes the petitioner, Amber L. Zinth, through her attorneys, Legal Action of Wisconsin, Inc., by Karen S. Roehl, and respectfully represents that:

1. Petitioner is a resident of Winnebago County.
2. Respondent Department of Health and Family Services (DHFS) is an agency of the State of Wisconsin.
3. Petitioner seeks review, pursuant to §227.52 Wis. Stats., of a decision of DHFS on the grounds that the decision contains errors of law, is not based on substantial evidence, and is contrary to law.
4. A final written hearing decision denying the petitioner's claims was issued on July 22, 2004, and a decision denying petitioner's request for rehearing was issued on August 23, 2004.
5. Petitioner is aggrieved by the final decision of DHFS, which allows recoupment of an alleged overpayment of State Supplemental Security Income (SSI)

benefits and related Caretaker Supplement benefits. A copy of said decision is attached hereto as Exhibit A. More specifically, and without limitation,

- (a) DHFS lacks statutory authority to recover the alleged overpayments [see Mack v. DHFS, 231 Wis.2d 644, 605 N.W.2d 651 (Ct. App. 1999)];
- (b) DHFS actions are a violation of petitioner's due process rights;
- (c) DHFS has failed to prove the State SSI Supplement overpayments, DHFS failed to meet its burden of proving the overpayment because the hearsay documents submitted as the agency's sole evidence are an improper basis for the agency's findings, thus the agency's decision is unsupported by substantial evidence and is in violation of due process;
- (d) any overpayments should be waived by DHFS;
- (e) alternatively, Chapter HFS 79, Wis. Adm. Code, is deficient.

WHEREFORE, petitioner asks that this court:

1. Review the respondent's decision;
2. Order respondent to prepare a transcript of the administrative hearing in this matter, and forward a copy of said transcript to counsel for the petitioner at no charge;
3. Allow counsel for petitioner to submit written and oral argument on the questions involved herein;

4. Reverse the July 22, 2004, decision (rehearing denied August 23, 2004); and,

5. Grant petitioner such further relief as the Court deems proper.

Dated this 20th day of September, 2004.



Karen S. Roehl, State Bar #1001508
Attorney for Petitioner

Legal Action of Wisconsin, Inc.
404 North Main Street, #702
Oshkosh, WI 54901

920.233.6521

SEP 20 2004

CLERK OF COURTS
CIVIL/FAMILY



STATE OF WISCONSIN
Division of Hearings and Appeals

RECEIVED

JUL 23 2004

LEGAL SERVICES OF NE, WI

In the Matter of

Amber Zinth
2512 Maple Grove Drive
Neenah, WI 54956

DECISION

CTS-70/62466

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2004, under Wis. Adm. Code, §§HFS 79.60 and HA 3.03, to review a decision by the State Supplemental Security Income (SSI) Unit to recover state SSI and caretaker supplement (CSP) payments, a hearing was held on April 21, 2004, at Neenah, Wisconsin. At the petitioner's request the record was held open 78 days for submission of a brief.

The issue for determination is whether the department may recover state SSI and CSP overpayments.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Amber Zinth
2512 Maple Grove Drive
Neenah, WI 54956

Represented by:

Atty. Karen S. Roehl
Legal Services of NE Wisconsin
404 N Main Street, Suite 702
Oshkosh, WI 54901

Wisconsin Department of Health and Family Services
Division of Disability & Elder Services
1 West Wilson Street, Room 550
P.O. Box 309
Madison, WI 53707-0309

By: Paula M. Hella
Winnebago County Dept. Of Human Services
211 N. Commercial Street
Neenah, WI 54956

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (SSN 536-80-5450, CARES #3108514431) is a resident of Winnebago County.
2. Petitioner received state SSI because she received federal SSI. She also received the state CSP payment for her children. The federal Social Security Administration (SSA) determined that

petitioner was ineligible for SSI effective September 1, 2003 and thereafter. It closed petitioner's federal SSI.

3. Petitioner received state SSI and the CSP in September, 2003. The state notified petitioner that both payments would end effective October 1, 2003. Petitioner appealed the termination of the CSP payments. Benefits were ordered to be continued by the Division of Hearings and Appeals. Petitioner thereafter received CSP in October, November, and December, 2003.
4. Petitioner withdrew the appeal of the CSP termination. CSP was terminated effective January 1, 2004.
5. By a notice dated December 18, 2003, the state SSI Unit informed petitioner that she was overpaid \$380.43 in September, 2003 because she was ineligible for federal SSI that month. The \$380.43 was the combined state SSI and CSP payment. The notice informed her that she was not eligible for a hearing because no recovery action had been commenced.
6. By a notice dated December 11, 2003, the state SSI Unit informed petitioner that she was overpaid \$750 in CSP payments for October through December, 2003. Those payments were made due to the continuing benefit order when petitioner was ineligible for federal SSI.

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 Social Security Administration), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that previously were done by the Social Security Administration 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.

Beginning January 1, 1998, with the advent of the Wisconsin Works (W-2) program, Aid to Families with Dependent Children (AFDC) ceased to exist in this state. Since W-2 is a work program, and SSI recipients by definition are unable to work, SSI recipients cannot qualify for W-2. The state thus implemented the Caretaker Supplement Program, which currently pays SSI recipient parents \$250 per month for one child, and \$150 per month for additional children. The program is mandated by Wis. Stat. §49.775.

To be eligible for the CSP payments the following criteria must be met: (1) the caretaker must be an SSI recipient; (2) the child or children must meet the financial and non-financial criteria for AFDC as it existed on July 16, 1996; and (3) the child or children must not receive SSI payments themselves. Wis. Stat. §49.775(2). See also MA Handbook, Appendix 31.

Wis. Adm. Code, §HFS 79.40, allows for the Department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrect state SSI and CSP assistance that have been paid, 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.

Petitioner was eligible for state SSI because she was a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. Because the SSA determined that she was ineligible for federal SSI, it follows that she also was ineligible for state SSI. Similarly, petitioner was eligible for CSP because she was eligible for SSI. When her SSI eligibility ended, so too did her CSP eligibility. The CSP paid from September through December, 2003 thus was overpaid.

Petitioner makes several arguments. Her primary arguments are that the recovery provisions of Wis. Adm. Code, §HFS 79.40 are invalidly promulgated rules. Petitioner's attorney made the same arguments in an earlier case. The deputy secretary recently ruled on those arguments and rejected them. See Final Decision no. MSS-59/59925, dated July 12, 2004.

Petitioner next argues that the notices of the overpayments were deficient. With regard to the October through December, 2003 CSP overpayments, two separate notices were sent on December 10, 2003. One stated that petitioner was not eligible for CSP because she did not receive SSI in the months in question. It broke down the total to \$250 per month, a calculation not difficult to determine since that was what petitioner received in CSP each month. The other stated more specifically that the benefits were continued because of a hearing request. Both notices told petitioner that she could appeal. Petitioner did appeal.

Petitioner cites a food stamp decision for the proposition that a specific rule or statute must be cited in the notice. In actuality, the food stamp program does not require a citation to a rule or statute. See 7 C.F.R. §273.13(a)(2). The medical assistance program does have such a requirement. See 42 C.F.R. §431.210.

Wis. Adm. Code, §HFS 79.60 requires the department to notify the recipient of the months and amounts that she was incorrectly paid and the right to appeal. It does not require a citation to applicable law. The December 10 notices satisfied the administrative code requirements.

With regard to the September overpayment, petitioner forces me to provide some history. Petitioner originally filed an appeal on January 15, 2004 concerning a caretaker supplement overpayment. The Division of Hearings and Appeals requested more information, and petitioner's attorney sent a copy of the December 18, 2003 notice concerning September, 2003. The director of the Division of Hearings and Appeals then denied the request for the hearing on February 25, 2004, stating:

Right now, there has been no adverse action. The state office has informed Ms. Zinth that they consider an overpayment to have occurred. That is all. They have not acted to intercept other payments to her, they have not demanded repayment at all. They may do so in the future, but it has not happened yet and therefore is not an issue that we may review at this time.

Petitioner's attorney then sent a copy of the December 10 notice, and the Division of Hearings and Appeals opened this appeal file for the months of October through December, 2003.

At the hearing petitioner raised the issue of September, 2003. Not being fully versed on the events leading up to the file's opening, I heard the issue and then requested that the state SSI office provide a case summary. The case summary was simple. The SSA determined that petitioner was ineligible for federal SSI in September, 2003. The state then found that petitioner also was ineligible for state SSI and CSP for the sole reason of her federal SSI ineligibility. The amount of the overpayment was the combination of petitioner's \$130.43 state SSI, see April 23 case summary, page 2, "State Paid Amount," and the \$250 CSP payment, see case summary, page 3, "C-Supp Paid Amount."

Petitioner actually was denied a hearing on the September overpayment. I heard the issue because petitioner raised it. For petitioner to now argue that the notice was inadequate is disingenuous. The notice simply informed petitioner that she was overpaid. It informed her additionally that the state would send her another negative notice if the state ever sought to withhold future SSI benefits. It specifically told her that she did not have a right to a hearing at the present time.

Since I have heard the issue, however, I will find simply that petitioner was overpaid those state benefits because to be eligible, she must have been eligible for federal SSI. The SSA determined that she was ineligible for federal SSI. Therefore petitioner was ineligible for state SSI and CSP.

Petitioner finally argues that Wis. Adm. Code, Chapter HFS 79 is deficient because §HFS 79.50 does not allow waiver of overpayment recovery if the amount is more than \$100. The chapter is a duly promulgated rule approved by the legislature.

CONCLUSIONS OF LAW

1. Petitioner was overpaid state SSI in September, 2003 and CSP from September 1 through December 31, 2003 because she was ineligible for federal SSI during those months.
2. The notice of the October through December overpayment was adequate.
3. The notice of the September overpayment was not meant to invoke a right to a hearing, and thus cannot be judged to be inadequate.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found 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 no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on the Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

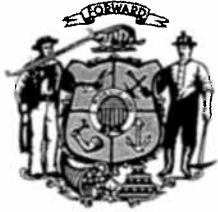
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of
Madison, Wisconsin, this 22nd day
of July, 2004.



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals
0720/bcs

cc: Kathleen Luedtke - SSI Coordinator - e-mail
Chris Normington - EDS Federal - e-mail
Sheryl Siegl - Winnebago Co. - e-mail
Karen S. Roehl-Legal Services of Northeastern Wisconsin



State of Wisconsin DIVISION OF HEARINGS AND APPEALS

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August 23, 2004

Atty. Karen S. Roehl
Legal Services of NE Wisconsin
404 N Main Street, Suite 702
Oshkosh, WI 54901

ORDER

Re: Rehearing Request
CTS-70/62466

Dear Ms. Roehl:

Your request for a rehearing dated August 11, 2004 is hereby denied.

Pursuant to sec. 227.49, Wis. Stats., a rehearing may be granted only on the basis of a material error of law or fact or upon the discovery of new evidence sufficiently strong to reverse or modify the order and which could not have been discovered previously by due diligence. The petition must specify in detail the grounds for the relief sought and supporting authorities. Your request does not establish the grounds necessary for granting a rehearing in this matter.

Your rehearing request essentially restates your hearing arguments. As noted in the decision, I have no authority to contradict the secretary's final decision, nor do I have authority to strike down a legally promulgated rule unless it clearly conflicts with a statute.

This is an order disposing of a petition for rehearing. Parties having standing to appeal may file a petition to Circuit Court under sec. 227.53 of the Wisconsin Statutes. A petition to Circuit Court must be filed no more than 30 days after the date of a denial of a timely rehearing petition. An appeal must be served on the Department of Health and Family Services, PO Box 7850, Madison, WI 53707-7850, as respondent. Copies of the appeal must also be served on all other 'Parties in Interest' identified in the original administrative hearing decision in this case.

Sincerely,

Brian C. Schneider
Administrative Law Judge

cc: Hearing Coordinator-Winnebago Co
Kathleen Luedtke - SSI Coordinator
Chris Normington - EDS Federal
Sheryl Siegl - Winnebago Co.
Karen S. Roehl-Legal Services of Northeastern Wisconsin