



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/171843

PRELIMINARY RECITALS

Pursuant to a petition filed December 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a hearing was held on April 14, 2016, at Appleton, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

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

By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. On February 20, 2015, Petitioner applied for Medicaid, alleging that she is completely disabled by anxiety and depression. (DDB file; Petitioner's testimony)
3. On December 10, 2015, the DDB denied Petitioner's Medicaid application. (DDB file; Testimony of Petitioner)

4. On December 17, 2015, the Petitioner filed an application for Social Security Disability Income (SSDI), indicating that she is completely disabled by a spinal fusion in her neck, never damage in her neck, arthritis in her neck, “issues in lumbar”, anxiety, and depression. (Testimony of Petitioner; DDB file)
5. On December 21, 2015, the Petitioner sought reconsideration of the Medicaid denial. (DDB file; Petitioner’s testimony)
6. The Social Security Administration (SSA) denied the Petitioner’s application for SSDI on January 28, 2016. (DDB file; Petitioners testimony)
7. On February 2, 2016, the DDB affirmed its original determination and on February 4, 2016, it forwarded the file to the Division of Hearings and Appeals for administrative review. (Id.; DHA file)
8. Petitioner’s medical condition has not changed since she was denied social security benefits by the SSA on January 28, 2016, though her medications have been adjusted in an attempt to control her anxiety and depression. (Petitioner’s testimony)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. DHFS, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Medicaid alleging a disability caused by her anxiety and depression. She also filed an application for SSDI that indicated she was disabled by anxiety and depression, as well as other physical impairments. The SSA denied Petitioner’s request for SSDI benefits within 12 months of her application for Medicaid benefits. Though there have been adjustments to the Petitioner’s medication in an effort to control her symptoms, there is insufficient evidence that her condition has changed. Even if Petitioner’s condition has changed, there is no indication that the SSA has refused to consider the change

in circumstances. Petitioner testified that she has filed an appeal of the SSDI denial and that her appeal is still pending. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is ORDERED

That the petition 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 Milwaukee,
Wisconsin, this 15th day of April, 2016.

\sMayumi M. Ishii
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 April 15, 2016.

Outagamie County Department of Human Services
Disability Determination Bureau