



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

In the Matter of



DECISION

MDD/143328

PRELIMINARY RECITALS

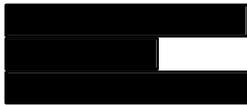
Pursuant to a petition filed July 31, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on September 20, 2012, at Kenosha, Wisconsin.

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:



Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: DDB file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On April 16, 2012, Petitioner applied for Medicaid, alleging that she is completely disabled. (DDB file; Petitioner's testimony)
3. On July 18, 2012, the DDB denied Petitioner's application. On July 31, 2012, the Petitioner sought reconsideration, but the DDB affirmed its original determination on August 21, 2012 and

forwarded the file to the Division of Hearings and Appeals for administrative review. (DDB file; Petitioner's testimony)

4. The Petitioner also applied for Social Security Disability benefits within a month applying for Medicaid. Petitioner's application for Social Security Disability benefits was based upon the same medical conditions described in her application for Medicaid. She was denied Social Security Disability benefits by the Social Security Administration (SSA) on July 13, 2012. (DDB file; Petitioner's testimony)
5. Petitioner's medical condition has not changed since she was denied social security benefits by the SSA on July 13, 2012. (Petitioner's testimony)

DISCUSSION

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 Social Security Disability benefits within a month of her application for Medicaid and her application for Social Security Disability benefits was based upon the same disabling conditions listed in her application for Medicaid. The SSA denied Petitioner's request for benefits within 12 months of her application for Medicaid. Petitioner's condition has not changed since she was denied Social Security Disability Benefits on July 13, 2012. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to make 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

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge 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.

To ask for a rehearing, 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 for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be 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 with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of October, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Disability Determination Bureau, wi.dd.madison@ssa.gov - wi.dd.madison@ssa.gov
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The preceding decision was sent to the following parties on October 10, 2012.

Kenosha County Human Service Department
Disability Determination Bureau