



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

In the Matter of

[REDACTED]

DECISION

MDD/143445

PRELIMINARY RECITALS

Pursuant to a petition filed August 16, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on December 13, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to review the Disability Determination Bureau's decision to deny Petitioner's application for disability –based Medicaid.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

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. Petitioner applied for disability-based Medicaid on April 4, 2012. Around that same time, he applied for Social Security Disability Income (SSDI). (Testimony of Petitioner; DDB file)
3. On July 18, 2012, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (Id.)
4. On July 24, 2012, the DDB sent Petitioner a notice indicating that it was denying his request for disability-based Medicaid. (DDB file)
5. Petitioner filed a request for reconsideration on August 13, 2012. On August 22, 2012, the DDB again denied Petitioner's request for disability -based Medicaid. (Id.)
6. On August 28, 2012, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
7. Petitioner's condition has not c hanged since the SSA denied his application for SSDI. (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.

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 at about the same time as he applied for disability-based Medicaid. Both application were based upon the same disabling conditions caused by Petitioner's Type2 Diabetes. The SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid. Petitioner's condition has not changed since he was denied Social Security Disability Benefits on July 18, 2012. 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.

It should be noted that Petitioner is 62 years old, so I looked at the Medicaid Eligibility Handbook, to determine when he would be eligible for Medicaid based upon his age. Regrettably, pursuant to the Medicaid Eligibility Handbook Section 5.1, a person must be 65 years of age or older to be considered eligible for benefits as an elderly person.

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 served and 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 17th day of
December, 2012.

\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 December 17, 2012.

Kenosha County Human Service Department
Disability Determination Bureau