



FH
[REDACTED]

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

In the Matter of

[REDACTED]

DECISION

MGE/144672

PRELIMINARY RECITALS

Pursuant to a petition filed October 20, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Oconto County Department of Health And Human Services in regard to Medical Assistance, a telephonic hearing was held on November 28, 2012, at Oconto, Wisconsin.

The issue for determination is whether the county agency correctly discontinued petitioner's presumptive MA eligibility effective November 1, 2012, and denied his MA application, due to lack of nonfinancial eligibility.

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: Dawn Schultz, ESS

Oconto County Department of Health And Human Services
501 Park Avenue
Oconto, WI 54153-1612

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 54 year old resident of Oconto County who is not blind and has no minor children living with him.
2. On March 12, 2012, the petitioner applied for MA as disabled at the county agency and requested presumptive disability due to serious medical problems.

3. On March 12, 2012, the county agency tentatively approved his MA application as presumptively disabled.
4. The Disability Determination Bureau (DDB) found petitioner to not be disabled for MA eligibility purposes in a decision on August 28, 2012.
5. The county agency sent an October 18, 2012 Notice of Decision to the petitioner indicating that his presumptive MA would discontinue effective November 1, 2012, and his MA application was denied, due to her lack of non-financial eligibility (under 65 years of age, with no minor children living with him, not blind or disabled as determined by the Disability Determination Bureau). See Exhibit 1.

DISCUSSION

To qualify for MA, a person must be both nonfinancially and financially eligible. Nonfinancial eligibility exists for persons who are under 18, age 65 or older, blind, disabled, or the parent of a “deprived” child. Wis. Stat. §§49.46(1), 49.47(4). A “deprived” child would have the primary wage earner in the home incapacitated or unemployed. During the March 25, 2010 hearing, ESS Kathy Olson testified that petitioner was non-financially ineligible for MA because he is not over 65 years old, disabled or blind, and is not the parent of a minor child.

An adult between ages 18 and 65, who does not have minor children, can be eligible for MA only if s/he is blind or disabled. Wis. Stats. §§ 49.46(1)(a) and 49.47(4)(a). The definition of disability is in accordance with federal SSI standards. Presumptive disability is a means of approving emergency Medical Assistance to a person before the Disability Determination Bureau (DDB) has an opportunity to make a determination as to a person’s disability.

MA Program policies require that an agency *must* act to discontinue presumptive disability MA when the Disability Determination Bureau finds an applicant “not disabled”. See Medicaid Eligibility Handbook, App. 5.9.5. That occurred here on August 28, 2012. After receiving the August 28, 2012 notice from DDB that petitioner had not been found disabled, the agency followed the appropriate discontinuance procedures and issued timely and adequate written notice telling the petitioner that his MA coverage would end on November 1, 2012. See also Income Maintenance Manual, II-G-2.0.0., et. seq. That action must be affirmed. The petitioner was no longer eligible for “presumptive disability” – based MA as of November 1, 2012. The DDB decision controls the MA – Presumptive Disability case administered by the county agency. The county agency correctly followed MA policy.

The MA Handbook provides that: “Presumptive Disability (PD) is a method for authorizing emergency MA coverage prior to a formal disability determination by DDB.” Medicaid Handbook, sec. 5.9.2, “Presumptive Disability.” Sec. 5.9.1 also indicates that “Federal SSI law and regulations state that the SSI program can find an individual to be presumptively disabled and will be treated as a person with a disability **until a final disability determination can be completed** (emphasis added).”

In this case, the record is clear that when DDB completed its review of petitioner’s disability application, and DDB found the petitioner to not be disabled for MA eligibility purposes on August 28, 2012. The petitioner explained that he needs continued MA because he medically needs an additional surgery during about March, 2013. However, the petitioner was unable to provide any testimony or evidence to refute the county’s case that he was non-financially ineligible for MA, as he was not over 65, blind, caring for a minor child, or determined “disabled” by DDB. Accordingly, the county agency correctly denied petitioner’s MA application and discontinued his presumptive MA effective November 1, 2012, due to non-financial ineligibility for MA.

CONCLUSIONS OF LAW

The county agency correctly discontinued petitioner's presumptive MA eligibility effective November 1, 2012, and correctly denied his MA application, due to lack of nonfinancial eligibility.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 18th day of December, 2012

\sGary M. Wolkstein
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 18, 2012.

Oconto County Department of Health And Human Services
Division of Health Care Access and Accountability