



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

In the Matter of



DECISION

MAP/144865

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on November 28, 2012, at Viroqua, Wisconsin.

The issue for determination is whether the Department erred in its determination that petitioner is not disabled for purposes of the MAP program.

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: No Appearance
Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Vernon County.
2. Petitioner applied for benefits based on disability with the Federal Social Security Administration ("SSA").

3. The SSA determined that petitioner was not disabled on May 11, 2012. Petitioner sought reconsideration from the SSA.
4. Petitioner applied for state medical assistance based on disability on July 10, 2012.
5. On September 19, 2012, the SSA affirmed its initial determination that petitioner is not disabled.

DISCUSSION

The Medicaid Purchase Plan allows those who are disabled but wish to work to receive Medical Assistance. Wis. Stat. § 49.472. Recipients pay a certain amount of their income toward Medicaid premiums. Before Wisconsin received an exemption from the federal government that allowed it to offer the Medicaid Purchase Plan, those gainfully employed were barred from receiving medical assistance as a result of a disability. Among the requirements to receive benefits under the program is the following: “The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.” Wis. Stat. § 49.472(3)(g).

In addition, a finding of disability must be in accordance with federal Social Security Disability Insurance Benefits (DIB) and/or Supplemental Security Income (SSI) standards. See, Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security DIB and/or SSI purposes made within 12 months of the MA – Disability and/or Medicaid Purchase Plan (MAP) application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. None of the exceptions apply here. See, 42 C.F.R. § 435.541(a); see also, U.S. Department of Health and Human Services, *Commentary*, 54 Fed. Reg. 236 (1989).

Because petitioner has been denied Social Security DIB following a finding of “no disability”, I must conclude that petitioner is not eligible for MAP. Petitioner has indicated an intent to appeal the federal determination.

If the petitioner pursues her appeal in the federal agency forum and is found “disabled”, she would then be considered disabled for MAP purposes as well. In that event, she would be well-advised to re-apply for the MA Purchase Plan at her county agency or request that the DDB re-open her disability case. In either event, she would still need to meet financial and resource tests to be eligible even if she were to establish that she is disabled under federal disability regulations; and must meet the work requirement for MAP. The Medical Assistance Purchase Plan is bound by the federal determination for a period of at least 12 months after the federal decision. There is no exception under law.

CONCLUSIONS OF LAW

The Department did not err in determining that petitioner is not disabled for MAP purposes.

THEREFORE, it is

ORDERED

That this appeal 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 Madison,
Wisconsin, this 30th day of November, 2012

\sJohn P. Tedesco
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 November 30, 2012.

Vernon County Human Services
Division of Health Care Access and Accountability