



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/145411

PRELIMINARY RECITALS

Pursuant to a petition filed May 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Door County Department of Social Services in regard to Medical Assistance, a hearing was held on January 28, 2013, at Sturgeon Bay, Wisconsin.

The issue for determination is whether petitioner is disabled for MA-Disability purposes.

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: No Appearance

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Door County.
2. Petitioner applied for MA-Disability on December 28, 2011. The application was based on a diagnosed meningioma for which he underwent surgery in May 2012.
3. Petitioner was determined not disabled by the Disability Determination Bureau for the purposes of federal programs on March 22, 2012. Petitioner applied for reconsideration and the denial was affirmed on November 14, 2012.

4. Petitioner stated during the hearing that his previous symptoms are resolved but that since his surgery he has experienced worsening nightmares and insomnia.

DISCUSSION

A person may be eligible for MA if they are blind or disabled. A finding of disability must be in accordance with federal social security/SSI/SSDI standards. See, Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security/SSI/SSDI purposes is binding on a State Medicaid ["MA"] agency. 42 C.F.R. § 435.541(b)(1). Exceptions may occur only if certain conditions exist such as: allegations of a disabling condition different from or in addition to that considered by SSA; or, allegations that the person's condition has changed or deteriorated since the SSA determination. If the person alleges that his or her previously considered condition has changed or deteriorated it must be more than 12 months after the most recent SSA determination, it must also be the case that the person has not applied to SSA for a determination with respect to those allegations. None of the exceptions apply here.

Petitioner has been denied SSI and SSDI following a finding of no disability by the SSA and none of the exceptions apply. The most recent SSA determination that petitioner is not disabled was on November 14, 2012. The testimony at hearing indicated that the condition petitioner raised in his previous disability applications is resolved for the most part. Petitioner, however, raises a new health concern that he believes should qualify him as disabled. I cannot usurp the role of the DDB in making a determination relating to a condition it has not yet received evidence or considered. An ALJ reviews an agency action for error. As the DDB has not considered whether insomnia and nightmares claimed by petitioner amount to a disabling condition, I cannot review for error. Therefore, I must conclude that petitioner is not disabled for purposes of for MA. If petitioner wishes, he may file a new application for disability based on his claim of a new condition.

CONCLUSIONS OF LAW

Petitioner is not disabled for purposes of MA-Disability.

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 6th day of March, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

David H. Schwarz
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 6, 2013.

Door County Department of Social Services
Disability Determination Bureau