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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/146410

PRELIMINARY RECITALS

Pursuant to a petition filed December 04, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance (MA), a hearing was held on January 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled for MA 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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On or about August 16, 2012 petitioner applied for disability through the state MA program.
3. By letter dated November 15, 2012, the Disability Determination Bureau (DDB) found that petitioner was not disabled for **state** disability MA. Petitioner sought reconsideration on December 4, 2012, but the DDB affirmed its determination on or about January 4, 2013. The file was then forwarded to the Division of Hearings and Appeals to schedule a hearing for petitioner. That hearing is the subject of this decision.

4. Prior to or concurrently with the state disability MA application, petitioner also applied for **federal** Social Security Disability Insurance (SSDI – Title 2) and Supplemental Security Income (SSI – Title 16). That application was processed separately through the Social Security Administration.
5. The Social Security Administration initially determined petitioner was not eligible for SSI based upon findings of no disability on November 13, 2012. A reconsideration of petitioner’s case resulted in a second denial by the Social Security Administration on January 3, 2013. Petitioner was required to appeal that decision separately to the Social Security Administration for a hearing before a federal administrative law judge, and petitioner testified that this occurred.
6. The petitioner does not allege any worsening or new medical impairment other than the impairments considered in the social security decision.

DISCUSSION

To be eligible for **state** MA disability benefits, a person between the ages of 18 and 65 must be blind or totally and permanently disabled. A disability determination is based upon the conclusion that the individual is:

Unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

20 C.F.R. § 416.905

“Substantial, gainful activity” was defined in 2012 as earning \$1010 a month or more through some type of employment.

In addition, Wis. Stat. §49.47(4)(a)4, declares that a **state** finding of total and permanent disability for MA purposes must be in accordance with **federal SSI standards**. The federal regulations provide that a finding of no disability for SSI purposes, made within 12 months of an application for state MA, is binding on the state MA agency because the standards for federal and state disability are the same. 42 C.F.R. § 435.541(c).

SSDI is a **federal** insurance program operated by the Social Security Administration for workers whom it determines are disabled. In order to receive SSDI benefits, an individual must have had earnings from which Social Security deductions were taken in at least 20 quarters (3 month periods) during the last ten years.

SSI is a **federal** welfare program also operated by the Social Security Administration for poor people whom it determines are disabled. An individual need not have paid into the Social Security program to obtain these benefits, but there are asset and income limits.

As the standards for **state** MA disability and **federal** SSDI and SSI benefits are the same, a finding of no disability for SSDI and SSI purposes made within 12 months of the MA application is binding on a state 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 which have been presented to the Social Security Administration. Unfortunately for petitioner, none of those 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). The information provided at hearing is not different from what was provided to the Social Security Administration.

I add for petitioner's information based on her questions at hearing that the definitions of disability in the regulations governing MA, SSI, and SSDI programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual's basic work activities, and that it will last 12 months or longer as a severe impairment. The requirements are delineated in five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but earning less than \$1010 per month, proceed to Test #2. 20 C.F.R. § 416.920(b)
2. An individual who does not have a "severe impairment" which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Test #3. 20 C.F.R. § 416.920(c)
3. If the individual's severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual's severe impairment does not meet or equal a listing, proceed to Test #4. 20 C.F.R. § 416.920(d)
4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Test #5. 20 C.F.R. § 416.920(e)

(Note, if the individual has marginal education (less than 7th grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2)

5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1)

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

Because petitioner has been denied SSDI and SSI following a finding of no disability by the federal Social Security Administration within one year of the application for state MA disability, I must conclude I do not have jurisdiction to consider the merits of petitioner's disability appeal. Therefore it must be determined petitioner is not eligible for state MA disability at this time.

Petitioner was required to appeal the federal decision regarding her SSDI/SSI separately to the Social Security Administration for a hearing before a federal administrative law judge, and she testified that this has occurred. Should petitioner prevail at her federal hearing and is found disabled, she would qualify nonfinancially as disabled for state MA.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That petitioner is not disabled as that term is used for state disability MA purposes pursuant to Wis. Stat. §49.47(4).

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 8th day of February, 2013

\sKelly Cochrane
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 February 8, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau