



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

MDD/146411

PRELIMINARY RECITALS

Pursuant to a petition filed August 07, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on March 19, 2013, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined that the Petitioner is not disabled for purposes of MA Disability.

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner is 46 years old. Her current diagnoses include arthritis, tendonitis, fibromyalgia, asthma, confusion, depression and panic attacks.
3. Petitioner is able to cook, do household chores (slowly and gradually), do personal cares. She has pain with nearly all activities. She is able to walk and able to shop. She is able to stand and sit approximately 45 minutes. She is able to get out of bed or a chair and climb stairs. She uses an

inhaler occasionally for her asthma. She has panic attacks on a regular basis and suffers from depression due to her medical conditions.

4. Petitioner applied for MA - Disability on April 3, 2012. By letter dated July 23, 2012, the Bureau found that Petitioner was "not disabled". Petitioner sought reconsideration on August 9, 2012, but the Bureau affirmed its determination on December 27, 2012.
5. On June 3, 2011, Petitioner applied for Social Security Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI). Those benefits were denied on November 29, 2012, with findings of "no disability". On January 4, 2012, the Petitioner filed for reconsideration of that finding. The Social Security Administration affirmed the "no disability" determination on reconsideration on July 27, 2012.
6. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision of July 27, 2012.

DISCUSSION

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 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 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 and SSI following a finding of "no disability", I must conclude that petitioner is not eligible for MA - Disability.

If the petitioner pursues an appeal in the federal agency forum and is found "disabled", she would then be considered disabled for MA – Disability purposes as well. In that event, she would be well-advised to re-apply for MA – Disability 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. The MA – Disability Program 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

Petitioner is not disabled as that term is used for MA - Disability purposes pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is

ORDERED

That the petition be, and hereby 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 30th day of April, 2013

\sDebra Bursinger
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 April 30, 2013.

Racine County Department of Human Services
Disability Determination Bureau