



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/146736

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on February 28, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals (DHA) has jurisdiction to make a determination on the merits of Petitioner's application for disability -based Medicaid, where there is a Social Security Administration denial of disability.

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: Disability Determination Bureau by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On June 11, 2012, Petitioner filed an application for Social Security Disability Income (SSDI). The Social Security Administration (SSA) denied Petitioner's application on August 29, 2012. Petitioner filed a request for Reconsideration, which the SSA denied on December 27, 2012. (DDB file)
3. On November 7, 2012, Petitioner filed an application for disability-based Medicaid benefits, asserting the same disabling conditions described in her application for SSDI. On December 28, 2012, the

Disability Determination Bureau (the DDB) denied Petitioner's application. (DDB file; Petitioner's testimony)

4. On January 11, 2013, Petitioner filed a request for reconsideration of the DDB decision. On January 14, 2013, the DDB upheld its decision to deny benefits and on January 17, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
5. Petitioner's condition has not significantly changed since the December 28, 2012 SSA decision. (Petitioner's testimony)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements.

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/SSI standards under Title XVI. *See Wis. Stats. §49.47(4)(a)4*. Because the standards are the same, a finding of no disability for Social Security/SSI purposes is binding on Wisconsin's Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, when there is a decision of "not disabled" by the SSA, there is no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
 - (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
 - (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, and
 - (A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Applying the above criteria to Petitioner's case:

- i) The conditions Petitioner described in her January 2013 request for re-consideration, are the same conditions that were considered by the SSA in reviewing Petitioner's application for SSDI.
- ii) The application for MA (medical assistance) is NOT more than 12 months *after* the most recent SSA determination. Petitioner's application for MA was filed in November 2012, one month *before* the most recent SSA determination in December 2012.
- iii) There is no indication in the record that Petitioner's condition has changed significantly since the December 2012 denial of her application for SSDI.

Based upon the foregoing, it is found that Petitioner does not meet any of the exceptions enumerated above. Consequently, the SSA's decision is binding, and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability -based Medicaid benefits.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits where there is a Social Security Administration denial of disability.

THEREFORE, it is

ORDERED

That the petition be 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 March, 2013.

\sMayumi M. Ishii
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 March 8, 2013.

Waukesha County Health and Human Services
Disability Determination Bureau