



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/146884

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 Brown County Human Services in regard to Medical Assistance, a hearing was held on February 21, 2013, by telephone.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.
2. Petitioner applied for MA on or about September 24, 2012. By letter dated November 21, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on January 23, 2013.
3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits and/or Supplemental Security Income (SSI). Those benefits were denied on July 6, 2012, and a subsequent reconsideration request was denied on November 16, 2012.

4. The petitioner does not allege any new medical impairment, though he has noted a worsening of pain associated with the impairments considered in the Social Security decision.

DISCUSSION

A State Medicaid (MA) finding of disability must be in accordance with federal social security/SSI standards. See Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a state 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).

At the hearing, the petitioner stated that the impairments noted in the MA application were the same as the ones in his Social Security application that was denied. He did, however, allege a worsening of the pain associated with those impairments. Even when an individual alleges that his or her condition has worsened since the most recent SSA decision of no disability, DHA may not have jurisdiction. If an individual alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, DHA may make an independent determination of disability for purposes of MA only if one of the following is true:

- (1) The individual has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; or,
- (2) The individual no longer meets the nondisability requirements (such as the income and asset limits) for SSI but may meet the state's nondisability requirements for MA.

See, 42 C.F.R. § 435.541(c)(4)(iii) (1997).

Thus, even though the petitioner alleged that there has been a worsening of the impairments, there is no evidence that either of the above alternatives is true in the petitioner's case. Therefore, DHA is bound by the prior SSA decision and must follow it. Because petitioner has been denied Social Security/SSI following a finding of no disability, I must conclude that petitioner is not eligible for MA at this time. If the petitioner wins his appeal of the SSA decision, he would be eligible for MA from the date of onset for SSI, assuming he meets all other requirements.

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That the petition for review 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 25th day of March, 2013

\sPeter McCombs
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 25, 2013.

Brown County Human Services
Disability Determination Bureau