FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/148273

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on April 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled pursuant to Medical Assistance standards.

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:
Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for MA on January 14, 2013. By letter dated February 21, 2013, the respondent found that petitioner was not disabled. Petitioner sought reconsideration, but the respondent affirmed its determination.
3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits (Title II). Those benefits were denied on November 7, 2012, and following reconsideration on February 13, 2013, with findings of no disability.

4. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision. Petitioner testified that her pain has increased over the last year.

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/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 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. 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 petitioner testified that she has no new disabling conditions, but noted that her pain has increased. The petitioner stated that she has received shots to address the pain, and that they have helped some. Based upon the record before me, I cannot conclude that her managed pain symptoms warrant a finding of disability.

Because petitioner has been denied Social Security following a finding of no disability, I must conclude that petitioner is not eligible for MA. Petitioner testified that she is still waiting to hear on the final status of her Social Security application. If she has filed an appeal, and she is successful on that appeal, the respondent may be bound to follow that determination. Petitioner is advised to notify the respondent in the event that a Social Security appeal is successful.

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 April, 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 April 25, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau