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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

██████████ ██████████
██████████ ██████████
██████████ ██████████

DECISION

MDD/148605

PRELIMINARY RECITALS

Pursuant to a petition filed June 08, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on May 21, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. Petitioner applied for Medicaid on or about January 20, 2012. By letter dated April 26, 2012, the DDB notified Petitioner that it had concluded that he was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination, apparently on or about February 11, 2013.

3. Prior to or concurrently with the Medicaid application, Petitioner also applied for Social Security disability benefits and/or Supplemental Security Income (SSI). Those benefits were denied on April 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

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 Medicaid 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/SSI following a finding of no disability, I must conclude that Petitioner is not eligible for Medicaid.

Petitioner applied for Medicaid because of rectal cancer. He was treated with surgery, chemotherapy and/or radiation. By the time of the hearing he had returned to work but has no health insurance available to him. Without medical insurance he finds he has not been able to be tested to be sure the cancer has not returned. He does not believe that it is fair that a working person does not have access to medical care. Nonetheless, the Division of Hearings and Appeals does not possess equitable powers or the power to change the law. See, e.g., *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I do note for Petitioner, however, that there are significant changes occurring in health care insurance coverage soon and encourage him to check with his county agency in a couple of months regarding eligibility for childless adult Medicaid and to also note the health insurance exchange that should have options available this fall.

CONCLUSIONS OF LAW

Petitioner is not disabled as that term is used for Medicaid 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 Milwaukee,
Wisconsin, this 13th day of June, 2013

\sDavid D. Fleming
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 June 13, 2013.

Kenosha County Human Service Department
Disability Determination Bureau