



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/149079

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2012, 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 June 06, 2013, at Milwaukee, Wisconsin. At the hearing, the Petitioner's representative requested additional time to submit information. The Petitioner's representative requested additional time in two subsequent phone calls. The final date for submission of additional documentation was July 10, 2013. No additional documentation was received.

The issue for determination is whether the agency properly determined the Petitioner is not 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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On February 18, 2011, the Social Security Administration (SSA) found the Petitioner is not disabled. On June 30, 2011, a request for reconsideration was filed. SSA affirmed its finding of no disability on October 3, 2011. A hearing was held in the matter and a hearing examiner

upheld the agency's determination of no disability on March 25, 2013. An appeal of that decision is pending.

3. On June 30, 2011, the Petitioner filed a MA Disability Application. On October 31, 2012, the agency issued a decision to the Petitioner informing her that it had denied her application, finding that she is not disabled.
4. On December 14, 2012, a request for reconsideration was filed. The request was denied on April 26, 2013.
5. Petitioner's primary diagnoses include degenerative joint disease, causing chronic pain in knees and hips, and morbid obesity. She has a history of 2nd and 3rd degree burns to her chest, arms and legs requiring skin grafting. She has a history of bowel obstruction, peptic ulcer, diverticulitis and pancreatitis.
6. Petitioner has mental health diagnoses that include post traumatic stress disorder, depressive syndrome, mood disorder, anxiety disorder, personality disorder. She has functional limitations that include moderate restriction of activities of daily living, moderate difficulties in maintaining social functioning and moderate difficulties in maintaining concentration, persistence or pace.

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 medical 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. See Wis. Stats. §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 agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has 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).

Petitioner's application for Social Security Disability benefits was denied on February 18, 2011. This was affirmed on October 3, 2011 and by a hearing examiner on March 25, 2013. Petitioner filed this application for MA Disability on June 30, 2011. This was within 12 months of the SSA determination on February 18, 2011 and is binding on the state agency unless one of the above conditions are applicable.

At the hearing, the Petitioner was represented by an authorized representative. He alleges the Petitioner has a disabling condition different from, or in addition, to that considered by SSA in denying her application. He stated that the Petitioner has recently been diagnosed with diabetes. He also testified that her other conditions have worsened. Specifically, he testified that the Petitioner is currently in the hospital after a left knee replacement. He testified that the Petitioner's doctors indicated that after her left knee heals, the Petitioner will have her right knee replaced. He stated that her doctors have said that once her knees are healed, the Petitioner will have one shoulder replaced.

The Petitioner's representative did not have any documentation from the Petitioner's physicians to verify his testimony. While I found the Petitioner's representative to be forthcoming and genuine, it is difficult to determine whether the Petitioner has a physician diagnosis of diabetes or whether her other conditions have worsened without some medical evidence. The Petitioner and her representative were allowed approximately six weeks to provide some documentation of her current condition. No information was received. Without some additional documentation verifying that the Petitioner's condition has changed or worsened, I must conclude that the agency properly denied the Petitioner's application for MA disability.

Nothing in this decision precludes the Petitioner from filing another application based on her current condition.

CONCLUSIONS OF LAW

The agency properly determined that the Petitioner is not disabled.

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 22nd day of July, 2013

\sDebra Bursinger
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 July 22, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau