



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MGE/149929

PRELIMINARY RECITALS

Pursuant to a petition filed June 12, 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 July 18, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department, by its agents, correctly discontinued the petitioner's Medical Assistance because he no longer meets any non-fiscal eligibility criteria.

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: Lee Yang, HSPC
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County. On July 31, 2012, the petitioner applied for Medical Assistance – Disability. He had a history of a total laryngectomy for squamous cell cancer in August, 2012. He has a permanent trach tube. In July, 2012, he was diagnosed with a history of cocaine and heroin abuse, but he has been clean for about 5 years. He has left back, neck and shoulder pain, of unknown etiology, apparently due to mild degenerative disease without fractures, and a history of past falls. Since the surgery, he has suffered some

- depression treated by a psychiatrist. His speech is 75-80% intelligible to a familiar listener in a quiet environment.
2. Apparently, at some point after application, the petitioner was granted presumptive disability pending the final state disability determination. No record in the disability file seems to establish why this occurred. Rather, the red file indicates that the county agency did not request presumptive disability be determined. See, CARES Request screenprint on left inside cover of red-file.
 3. Concurrent with the petitioner's MA-Disability application, he filed an application with the federal Social Security Administration for Social Security Disability Insurance Benefits and/or Supplemental Security Insurance asserting that he is disabled.
 4. On October 4, 2012, the Social Security Administration denied the petitioner's application for federal disability status finding him 'not disabled'. On October 24, 2012, the federal agency re-affirmed the denial of disability status.
 5. On October 9, 2012, the MA Program denied the petitioner's application for MA-Disability, citing to the binding effect of the federal determination of October 4, 2012.
 6. On October 29, 2012, the petitioner apparently requested reconsideration of the State MA denial decision.
 7. On November 1, 2012, the petitioner granted the MA Program a written waiver for delays in the decision-making process.
 8. On November 20, 2012, the petitioner, by his attorney, filed an appeal contesting the federal denial determination. A hearing has not yet been held and is pending.
 9. On or about May 29, 2013, the county agency issued a Notice to the petitioner informing him that his Elderly, Blind & Disabled MA would end on July 1, 2013, because he was not blind, disabled, elderly (65 or over) or otherwise eligible. The agency had apparently discovered that he was no longer considered presumptively disabled. See, Exhibit #1, attached Case Comments for June 17, 2013.
 10. On or about May 29, 2013, the petitioner called the agency and inquired as to why his MA was ending in July, 2013, and he was told that it was because he is not elderly, blind or disabled and cannot continue receiving it. He was informed that he could, however, re-apply.
 11. On or about June 6, 2013, the petitioner completed a new MA-Disability application. He was given a Medicaid Presumptive Disability request form, DHS Form F-10130, to have his doctor complete to request presumptive disability MA during the pendency of a new disability application, but he returned it without the doctor having provided a medical condition statement or signature.
 12. On June 12, 2013, the petitioner filed an appeal contesting the July 1, 2013, termination of his EBD – MA. Benefits were ordered to continue pending the hearing decision.
 13. On June 19, 2013, the MA Program, by the Disability Determination Bureau, determined that the petitioner was still not disabled under the federal determination of October 24, 2012.
 14. On June 26, 2013, the petitioner's disability appeal file was received from the Disability Determination Bureau for the first time, and the instant hearing resulted.
 15. The petitioner is now 48 years old.
 16. It does not appear that any other action has been taken on the June 6, 2013, re-application because he did not complete these forms fully.
 - 17.

DISCUSSION

In order to be non-financially eligible to receive Elderly, Blind or Disabled Medical Assistance, you must be 65 or older, blind or disabled. Wis. Stat. § 49.47(4)(a). In order to be non-financially eligible to receive one of the forms of BadgerCare, you must be a child 18 or under, or the caretaker or parent of such a child. Wis. Stat. § 49.47(4)(ag).

The petitioner is 47 years old. He is not blind. He was formerly considered disabled presumptively, in some manner unknown, but he was clearly found not disabled long ago by the DDB for MA-Disability purposes, two times within the past year, i.e., in October, 2012. This means he is not disabled for MA purposes at present, and he will not be unless he the federal government reversed the Social Security denial decision, and/or 12 months elapse from the last SSA decision, he files a new application for MA, and establishes that he has new or worsened conditions that the SSA has refused to consider. 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 MA Program is bound by the federal agency's disability determination for at least 12 months.

The agency had no choice under law but to end his eligibility. Rather, it appears that through an oversight, he continued to be certified for MA for nearly a year when he was no longer eligible for presumptive disability.

CONCLUSIONS OF LAW

The petitioner does not meet any non-financial criteria for Elderly, Blind or Disabled MA because he is 48, not blind, and determined by the Social Security Administration on October 24, 2012, to be currently not disabled; and this decision is binding on the MA Program as to disability status at present.

THEREFORE, it is

ORDERED

That the petition for review of the discontinuance of Elderly, Blind & Disabled MA herein be, and the same 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 Madison,
Wisconsin, this 8th day of August, 2013

\sKenneth D. Duren, Assistant Administrator
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 August 8, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability