FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/150829

PRELIMINARY RECITALS

Pursuant to a petition filed May 14, 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 telephone hearing was held on August 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled.

There appeared at that time 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
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. The petitioner applied for medical assistance based upon a disability on or about January 29, 2013. That claim was denied with a finding that she was not disabled on March 19, 2013.
3. The petitioner also applied for SSI/SSDI benefits. The Social Security Administration denied that claim with a finding that she was not disabled on July 17, 2013.

4. The petitioner's medical assistance application did not allege any new disabling condition that has arisen since the Social Security Administration denied her claim.

5. The petitioner contends that her condition has deteriorated since the Social Security Administration denied her claim. However, the Social Security Administration has not refused to consider said deterioration after being requested to do so.

DISCUSSION

A person between 18 and 65 who is not pregnant and has 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 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(c); *see also* U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989).

The petitioner does allege that her condition has deteriorated since it was last reviewed. However, I can overturn a decision under these circumstances only if the petitioner applied to the Social Security Administration for reconsideration and it refused to consider the deterioration. 42 C.F.R. § 435.541(c)(4)(ii). That has not happened here. While petitioner has appealed her Social Security denial, because the petitioner has been denied Social Security/SSI following a finding of no disability, and that denial is still in effect, I must conclude that she is not presently eligible for MA.

CONCLUSIONS OF LAW

The petitioner is not disabled.

THEREFORE, it is **ORDERED**

The petitioner's appeal 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 20th day of September, 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 September 20, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau