



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152311

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 hearing was held on October 24, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

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:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On October 17, 2012, Petitioner filed an application for Social Security Disability Income (SSDI), alleging a disability from congestive heart failure and Chronic Obstructive Pulmonary Disease a.k.a. COPD. (DDB file)

3. Petitioner filed an application for disability-based Medicaid benefits on November 12, 2012, also alleging disability from congestive heart failure and COPD. (DDB file)
4. On March 21, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (DDB file)
5. The Disability Determination Bureau (DDB) denied Petitioner's application for Medicaid benefits on April 3, 2013. (DDB file)
6. Petitioner filed for reconsideration of both decisions. (Petitioner's Testimony; DDB file)
7. On September 17, 2013, the SSA again denied Petitioner's application for SSDI. (Id.)
8. On September 19, 2013, the DDB again denied Petitioner's application for Medicaid benefits and on September 23, 2013, forwarded Petitioner's file to the Division of Hearings and Appeals for Review. (DDB file)

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 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 his 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)(emphasis added).

Here, Petitioner applied for both Medicaid benefits and SSDI alleging the same disabling conditions. The SSA denied Petitioner's request for benefits within 12 months of his application for Medicaid.

Petitioner asserts that his condition has changed since he was denied Social Security Disability Benefits on September 17, 2013. However, he has not received any formal assessments from a physician, (in part because he can't afford further medical care), documenting a change in his condition. Petitioner submitted additional medical records from a hospitalization that occurred in July 2013. Having reviewed those records and compared it to information in the DDB file, it is difficult to discern a documented change in Petitioner's condition. Consequently, the SSA's decision is binding and the Division of

Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that he can apply for insurance coverage under the Affordable Care Act by calling [REDACTED] or by going on-line at www.healthcare.gov.

Other Information

Wisconsin Medicaid law will change significantly, effective January 1, 2014. On that date, a person is eligible for Wisconsin Medicaid if his income is at or below 100% of the federal poverty level; it will no longer be necessary that a recipient be under 19, elderly, blind, disabled, or a caretaker relative. The January 2014 version of Medicaid may be applied for online from November 18, 2013 onward at Wisconsin's website, <https://access.wisconsin.gov>.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition 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 28th day of October, 2013.

\sMayumi M. Ishii
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 October 28, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau