



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152313

PRELIMINARY RECITALS

Pursuant to a petition filed August 29, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance, a hearing was held on December 03, 2013, at Milwaukee, Wisconsin.

NOTE: The record was held open until December 9, 2013, to give Petitioner an opportunity to submit additional medical documentation. No documentation has been received by the designated deadline.

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, Room 651
Madison, Wisconsin 53703
By: DDB by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On February 22, 2013, the Petitioner filed an application/initial claim for Social Security Disability Income, alleging a disability caused by deep vein thrombosis in the left leg, a hip

replacement, arthritis, chronic right shoulder pain, insomnia, and chronic pain and numbness in his arm. (DDB file)

3. On March 11, 2013, the Petitioner filed an application for Disability-based Medicaid benefits, alleging a disability caused by deep vein thrombosis in his lower extremity. (DDB file)
4. On July 17, 2013, the Social Security Administration (SSA) denied Petitioner's claim for Social Security Disability Income (SSDI). (DDB file)
5. On July 23, 2013, the DDB sent Petitioner a letter indicating that his application for Medicaid benefits was denied. (DDB file)
6. On August 29, 2013, the Petitioner submitted a request for reconsideration of the DDB decision. At about the same time, the Petitioner also submitted a request for reconsideration of the SSA decision. (Testimony of Petitioner; DDB file)
7. On September 17, 2013, the DDB again denied Petitioner's application for Medicaid benefits and on September 20, 2013, forwarded the file to the Division of Hearings and Appeals for review. (DDB file)
8. As of the December 3, 2013 hearing date, Petitioner's request for reconsideration of the SSA decision was still pending. (Testimony of Petitioner)

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 Medicaid benefits within a month of his application for SSDI and his application for SSDI benefits was based upon the same disabling conditions listed in his application for

Medicaid. The SSA denied Petitioner's request for SSDI 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 July 17, 2013. However, there is no medical documentation showing that his condition has changed. In addition, there is no indication in the record that the Social Security Administration has refused to take into consideration any changes in Petitioner's condition, while his request for reconsideration of the SSA decision is pending. 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 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 at Wisconsin's website, <https://access.wisconsin.gov>.

Petitioner should also note that he can apply for insurance coverage under the Affordable Care Act by calling 800-318-2596 or by going on-line at www.healthcare.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, Room 651, 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 10th day of December, 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 December 10, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau