FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/152791

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 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 ["MA"], a Hearing was held via telephone on December 10, 2013.

The issue for determination is whether petitioner is disabled for purposes of MA.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (48 years old) is a resident of Brown County.
2. In June 2013 petitioner applied for MA on the basis of disability. By a letter dated August 7, 2013 DDB found that petitioner was not disabled. On August 19, 2013 petitioner filed a

Medicaid -- Adult Reconsideration Request, but the DDB affirmed its determination of not disabled.

3. Petitioner applied for Supplemental Security Income ["SSI"; a.k.a. Title 16] and Social Security Disability Insurance ["SSDI"; a.k.a. Title 2] with the Social Security Administration ["SSA"]. On October 3, 2013 SSA determined that petitioner was not disabled and denied her application for SSI and SSDI.

4. Petitioner does not have a disabling condition different from or in addition to that considered by SSA; she does not allege that the SSA has refused to consider an alleged change or deterioration in her condition; she does not allege that she no longer meets the nondisability requirements for SSI.

DISCUSSION

A person may be eligible for MA if they are blind or disabled. A finding of disability must be in accordance with federal social security (SSI/SSDI) standards. See, Wis. Stat. § 49.47(4)(a)4. (2011-12). Because the standards are the same, a finding of no disability for Social Security (SSI/SSDI) purposes is binding on a State Medicaid ["MA"] agency. 42 C.F.R. § 435.541(b)(1) (2011). Exceptions may occur only if certain conditions exist such as: allegations of a disabling condition different from or in addition to that considered by SSA; or, allegations that the person's condition has changed or deteriorated since the SSA determination. If the person alleges that his or her previously considered condition has changed or deteriorated it must be the case that SSA has refused to consider the new allegations <u>or</u> it must be more than 12 months after the most recent SSA determination and the person has not applied to SSA for a determination with respect to those allegations. None of the exceptions apply here. See, 42 C.F.R. § 435.541(c)(4) (2011); see also, U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989).

Petitioner has been denied SSI and SSDI following a finding of no disability by the SSA and none of the exceptions apply. Therefore, it must be concluded that petitioner is not disabled for purposes of MA. If petitioner has new information or evidence affecting previous SSA determinations she should contact the SSA and supply the SSA with that information. See, 42 C.F.R. § 435.541(b)(2) (2011).

At the December 10, 2013 Hearing petitioner testified that she had a recent diagnosis of scoliosis. However, he medical records show that she has had this diagnosis since at least mid-August 2013 -- well prior to the time of the October 3, 2013 SSI/SSDI finding that she is not disabled.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4)(a)4. (2011-12).

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 Madison,
Wisconsin, this 11th day of December, 2013

_____

\sSean P. Maloney
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 11, 2013.

Brown County Human Services
Disability Determination Bureau