



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████ ██████████
██
██

DECISION

MDD/152851

PRELIMINARY RECITALS

Pursuant to a petition filed July 8, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, by the Disability Determination Bureau, in regards to the denial of the petitioner's application for Medical Assistance-Disability, a telephone hearing was held on November 20, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's application for MA – Disability benefits because she is not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
██
██

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner is a 58 year-old single female resident of Milwaukee County. She applied for Medical Assistance Disability benefits on April 5, 2013. She has a 9th grade education.
2. The petitioner has the following conditions: bone disease (unspecified); parathyroid disease; high blood pressure; generalized osteoarthritis, including pain in her hands and feet. Her arthritis is at the severe impairment level, but was determined not to meet a listing level. She has visual acuity problems, but failed to completed a consultative eye exam, so the severity is undetermined by her leaving the appointment mid-way. She alleges hearing difficulties, etiology unknown, and

untested. She has lost weight in recent months, going from 150 lbs. to 120 lbs. She reports she is losing her hair. She has a history of alcohol abuse, but reports this has been in remission since 2003. She has had some mental health issues, with possible affective disorders, but is not seeking treatment. She is not compliant with medications for any of these above-listed conditions because she has no money for drugs or to see physicians, nor any insurance coverage.

3. On June 29, 2013, the Disability Determination Bureau (“DDB”) issued a letter Notice to the petitioner informing her that it had determined that she is “not disabled” as that term is defined under Medical Assistance and Social Security Regulations. The petitioner requested reconsideration.
4. On November 15, 2013, the DDB reaffirmed on reconsideration its prior determination that the petitioner is “not disabled”.
5. On a date unknown in 2012, the federal Social Security Administration determined that the petitioner was “not disabled” for Supplemental Security Income purposes.
6. On August 17, 2012, the federal Social Security Administration reaffirmed on reconsideration the determination that the petitioner was “not disabled” for Supplemental Security Income purposes.
7. Gail Mathison of the Disability Determination Bureau confirmed in a telephone contact by this administrative law judge (with the petitioner’s consent), that the petitioner had at no time since August 17, 2012, filed an appeal with the federal Social Security Administration.

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).

The petitioner is 58 years old. She has not established with any clinical evidence that she is blind. The federal Social Security Administration found, on reconsideration, on August 17, 2012, that her conditions do not make her disabled under federal SSI regulations. The MA Program is bound by a final federal determination for at least 12 months. Here, the petitioner applied 8 months after the federal denial. The MA Program is bound by the federal decision unless the federal government reversed the Social Security denial decision, and/or 12 months elapsed since the last SSA decision and she filed a new application for MA, and established that she 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. That means an application date within 12 months, as occurred here. This petitioner never appealed the adverse federal determination at all, so it cannot be said that the federal agency has refused to consider any evidence of new or worsened conditions.

If the petitioner re-applies to the federal agency and establishes that she is disabled for the federal benefit program, then she would be disabled for the state MA Program. In addition, now that 12 months have elapsed, she can also file a new Medical Assistance – Disability Program application and attempt to provide better clinical evidence showing she is disabled. Finally, she may also apply under the new federal Affordable Care Act for medical coverage regardless of the nature or severity of her medical problems, as that program is tested upon financial means, and she proffers that she has very little means. If this is so, then she may qualify for federal medical coverage with little or no premium requirement at all. She is encouraged to do so.

CONCLUSIONS OF LAW

The Department and the DDB correctly denied the petitioner’s application for MA-Disability benefits because the MA Program is bound by the Social Security determination that she is not disabled.

THEREFORE, it is

ORDERED

That the petition for review 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 21st day of November, 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 November 21, 2013.

Milwaukee Enrollment Services
Disability Determination Bureau