



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/153617

PRELIMINARY RECITALS

Pursuant to a petition filed August 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 March 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Rick Steinberg
12690 W North Ave Bldg C
Brookfield, WI 53005

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He is 41 years old.
2. Petitioner has diagnoses that include: left leg amputation, arthritis, high blood pressure, sleep apnea, low back pain, phantom left leg pain and right knee pain.
3. On November 12, 2012, the Petitioner applied for Medicaid Disability. The agency most recently denied the Petitioner's application on August 14, 2013.

4. In or about November, 2012, the Petitioner filed an application for Social Security Disability. On July 2, 2013, the Petitioner's application was denied and on November 18, 2013, the Petitioner's application was denied upon reconsideration. The Petitioner has appealed the Social Security Administration's determination.

DISCUSSION

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. 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 (MA) agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. None of the exceptions apply here. 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 Petitioner testified at the hearing that he is seeking a finding of disability based on the same conditions for which he applied. He noted that his right knee pain has intensified but the condition itself (osteoarthritis) has not changed. Because the SSA has issued a finding of no disability within 10 months of the MA application, that finding is binding on the state agency. Therefore, I must conclude that the agency properly determined that he is not disabled. I note that if the appeal of the SSA determination results in the agency's determination being overturned, the Petitioner may re-apply for MA disability.

I also note that the Petitioner has minor children and therefore may be eligible for BC+. If he has not already explored that option with the agency, he can contact the agency to have his eligibility reviewed.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is not disabled.

THEREFORE, it is

ORDERED

That 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, 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 5th day of March, 2014

\sDebra Bursinger
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 March 5, 2014.

Milwaukee Enrollment Services
Disability Determination Bureau