



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/154328

PRELIMINARY RECITALS

Pursuant to a petition filed July 01, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on January 30, 2014, at West Bend, Wisconsin.

NOTE: The record was held open for Petitioner to submit additional medical records. Petitioner submitted a 26 page fax from Washington County Human Services Department that has been marked as Exhibit 2 and entered into the record.

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 Washington County.

2. On January 31, 2013, the Petitioner applied for Social Security Disability Benefits (SSDI), asserting that he was disabled due to mental illness, herniated disks and torn ligaments in two knees. (DDB file)
3. The Petitioner applied for disability-based Medicaid benefits on February 25, 2013, stating that he was disabled due to herniated disks in his back; torn meniscus in his right knee and a torn ligament in his left knee. (DDB file)
4. On June 14, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (DDB file)
5. On June 19, 2013, the Disability Determination Bureau (DDB) sent Petitioner a notice indicating that his application for Medicaid benefits was denied. (DDB file)
6. On July 1, 2013, the Petitioner filed for reconsideration of the DDB decision, asserting that he was suffering from depression and that he was not able to sit, stand or walk for any great length of time. (DDB file)
7. The Petitioner also filed for reconsideration of the SSA decision. (DDB file)
8. On December 16, 2013, the SSA again denied Petitioner's application for SSDI benefits. (DDB file)
9. On December 18, 2013, the DDB again denied Petitioner's application for Medicaid benefits and on December 19, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review.

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 disability-based Medicaid. 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 both programs alleged a disability caused by herniated disks and torn ligaments in his knees. Upon Petitioner's requests for reconsideration, both applications also alleged a disability caused by mental illness/depression. 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 December 16, 2013. Specifically, Petitioner testified that his depression has worsened and that he has been feeling more suicidal. In support of his claim, the Petitioner submitted documentation from Washington County Human Services, where he sees a therapist. Regrettably, his therapist's notes end on December 17, 2013, because Petitioner was unable to attend his appointments in January 2014. As such, there is no medical documentation in the record showing that Petitioner's condition has changed since he was denied SSDI benefits by the SSA. Consequently, the SSA decision is binding and there is no jurisdiction to review the merits of Petitioner's application for Medicaid.

At the hearing, Petitioner was given information about Badger Care+ benefits that will become available to childless adults with income less than 100% of the Federal Poverty level, beginning April 1, 2014. Just as a reminder, applications are now being accepted at access.wisconsin.gov.

The Petitioner can also apply for insurance coverage under the Affordable Care Act by calling 1- [REDACTED] or by going on-line at www.healthcare.gov.

The Petitioner might also be able to get some of his health care needs met at the [REDACTED], West Bend, WI 53095; [REDACTED]; [REDACTED]

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 February, 2014.

\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 February 10, 2014.

Washington County Department of Social Services
Disability Determination Bureau