



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/154466

PRELIMINARY RECITALS

Pursuant to a petition filed October 8, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Disability Determination Bureau (Bureau or DDB) in regard to Medical Assistance (MA or Medicaid), a hearing was held on February 4, 2014, by telephone. The hearing record was held open for 14 days for additional submissions, which were received.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Christine Bremer Muggli
2100 Stewart Ave Suite 230
Wausau, WI 54402

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Portage County.
2. Petitioner applied for MA on July 5, 2013. By letter dated September 27, 2013, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on February 19, 2014.

3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits and Supplemental Security Income (SSI). Those benefits were denied on July 23, 2013 and December 18, 2013 (Reconsideration), with findings of no disability.
4. The petitioner does not allege any new medical impairment in addition to the impairments considered in the Social Security Reconsideration decision (right biceps tear, musculoskeletal pain in the lower back and shoulder, history of two back surgeries, limited use of some fingers in the left hand, dysphagia, bowel resection). He does allege a worsening of the digestive system impairment (post-operative pain and diarrhea from the October 2013 resection) considered in the Social Security decision. The Bureau and the Social Security Administration concluded in 2013 that the petitioner, though likely incapable of returning to his former employment as a truck driver, retained the residual functional capacity to perform “light” work (carry 10 pounds frequently, 25 pounds infrequently).

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).

Significantly, the petitioner did allege and document that he required hospitalization for a bowel resection (ischemic bowel, four feet removed) in October 2013. Although he initially appeared to be healing well, he developed pain and diarrhea post-operatively. A note from Dr. Wiersma on December 31, 2013, indicated that a CT scan did not show “any significant issues or concerns.” Nonetheless, the physician found the petitioner’s complaints of pain and diarrhea credible. The doctor was also concerned that the petitioner was taking excessive amounts of prescribed painkillers. His weight of 140 pounds was recorded on 11/19/2013 and 12/31/13. This information was not enough to have the petitioner found disabled due to a digestive disorder. *See*, Social Security Disability Listings, at §§ 5.02 and 5.08, online at <http://www.ssa.gov/disability/professionals/bluebook/5.00-Digestive-Adult.htm>

Because petitioner has been denied Social Security/SSI following a finding of no disability, I must conclude that petitioner is not eligible for MA. This Medicaid decision has no effect on the outcome of any appeal that the petitioner may have pending before the Social Security Administration, as the SSA Judge’s decision always trumps a state Administrative Law Judge decision on disability.

Because the petitioner apparently has adjusted gross income under \$11,600 (household of one person), he may wish to take advantage of a change in Wisconsin law that occurs effective April 1, 2014. As of that date, a person with income under 100% Federal Poverty Level may qualify for BadgerCare Plus health insurance without having to prove that he is disabled. He can apply online at <https://access.wisconsin.gov> or at a local county human services department.

CONCLUSIONS OF LAW

Petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is

ORDERED

That the petition for review 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 Madison,
Wisconsin, this 21st day of February, 2014

\sNancy J. Gagnon
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 21, 2014.

Portage County Department of Human Services
Disability Determination Bureau
Attorney Christine Bremer Muggli