



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/154666

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on March 11, 2014, at Kenosha, Wisconsin.

NOTE: The record was held open to give Petitioner an opportunity to submit additional medical documentation. On March 11, 2014, Petitioner submitted a ten page packet of e-mails. The packet has been marked as Exhibit 3 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 Kenosha County.

2. On May 22, 2013, the Petitioner filed an application for Social Security Disability Benefits (SSDI), stating that he had become disabled due to an injury to his lower back and to both knees. (Testimony of Petitioner; DDB file)
3. On October 9, 2012, the Social Security Administration (SSA) denied Petitioner's application for SSDI benefits. (Testimony of Petitioner; DDB file)
4. On July 1, 2013, the Petitioner filed an application for Medicaid benefits, asserting that he had become disabled due to chronic pain in his knees, lower back, neck, feet, hands, toes and fingers after suffering a fall at work. (Testimony of Petitioner; DDB file)
5. The Petitioner also filed for reconsideration of the SSA decision. (Testimony of Petitioner; DDB file)
6. On October 16, 2013, the SSA again denied Petitioner's application for SSDI benefits. (Id.)
7. On October 21, 2013, the DDB denied Petitioner's application for Medicaid benefits. (DDB file)
8. The Petitioner filed for reconsideration on November 4, 2013, asserting increased pain in his knees, lower back and legs, numbness in his toes, hands feet and neck, depression and pain in his tail bone. (DDB file; testimony of Petitioner)
9. On January 2, 2014, the DDB again denied Petitioner's Medicaid application and on January 9, 2014, 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 MA. 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 both Medicaid benefits and for SSDI benefits, stating that he had become disabled due to chronic pain issues in multiple parts of his body. The SSA denied Petitioner's request for SSDI benefits within 12 months of his application for Medicaid.

Petitioner asserts that his condition has changed since the SSA denied his application for SSDI benefits in October 2013. To support his claim, the Petitioner submitted medical records (Exhibit 2) and a packet of e-mails. (See Exhibit 3)

Unfortunately, all of the medical records in Exhibit 2, pre-date the October 2013 SSA decision and therefore, do not support the claim that Petitioner's condition has changed since October 2013. Looking at Exhibit 3, it appears the e-mails address the difficulties the Petitioner has been having with the Workers' Compensation insurance carrier who is supposed to be paying for medical bills related to his injury at work. The e-mails do not address whether the Petitioner has had a change in condition since October 2013 that the SSA has refused to review.

Based upon the foregoing, it is found that the record does not support a finding that the Petitioner's condition changed since the SSA denied his application for benefits in October 2013. Consequently, the SSA's decision is binding and the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits.

Petitioner should note that the BadgerCare program is now open to all adults with income below 100% of the Federal Poverty Level. The Petitioner can apply for the BadgerCare program by going on-line at access.wisconsin.org. If the Petitioner has difficulty with the website, he can call 1-██████████ for assistance.

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 25th day of March, 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 March 25, 2014.

Kenosha County Human Service Department
Disability Determination Bureau