



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/157627

PRELIMINARY RECITALS

Pursuant to a petition filed January 03, 2014, 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 Medical Assistance - Disability, a telephone hearing was held on August 27, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled.

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: No Appearance

ADMINISTRATIVE LAW JUDGE:

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

FINDINGS OF FACT

1. Petitioner is a 51 year-old married female resident of Milwaukee County. She does not have any minor children in her care. She weighs 256lbs., and is 66" tall. Her body mass index score is 41.8. She has arthritic lower back pain, with pain radiating into both thighs and particularly the right knee. She reports bilateral knee pain. She has coronary heart disease and hypertension, well controlled by medication. She is diagnosed with chronic obstructive pulmonary disease, (COPD). She has hypothyroidism without complications. She has a history of crack and cocaine abuse, with a positive test for cocaine in December, 2013, while also negative for morphine when she was supposed to be taking morphine sulfate. She has a history of asthma with no clinically

reported recent exacerbations. She is currently undergoing sleep apnea testing, but has not yet been diagnosed with the condition.

2. Petitioner applied for MA-Disability on October 14, 2013. By letter dated November 22, 2013, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on May 9, 2014.
3. Prior to or concurrently with the MA - Disability application, petitioner also applied for Social Security disability benefits and Supplemental Security Income (SSI). Those benefits were denied on August 8, 2013, with findings of no disability. She was again denied on reconsideration by the federal agency on November 20, 2013; and she has an appeal pending before a federal administrative law judge but the hearing has not yet occurred.
4. The petitioner does not allege any new medical impairment, nor any worsening of the impairments considered in the Social Security decision; rather, she concedes that all of the same disabling conditions alleged in the MA application were reported to the Social Security Administration and are being considered by the federal agency in the appeal process. See, Finding of Fact #1, for a list of same.

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 Disability Insurance Benefits (DIB) and/or Supplemental Security Income (SSI) standards. See, Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security DIB and/or SSI purposes made within 12 months of the MA-Disability 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).

Because petitioner has been denied Social Security DIB and SSI benefits following a finding of no disability within 12 months of the instant application, I must conclude that petitioner is not eligible for MA-Disability. Rather, the MA Program is bound by the federal denial determination at present. If the petitioner successfully appeals her federal denial, and is found eligible for DIB and/or SSI, she would then be disabled for MA purposes too. In that event, she should report that disability status to the Department. At that juncture, she would then be tested for financial eligibility. At present, she is not disabled under law as a consequence of the federal denial of record within 12 months.

CONCLUSIONS OF LAW

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

THEREFORE, it is

ORDERED

That the petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 2nd day of September, 2014

\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 September 2, 2014.

Milwaukee Enrollment Services
Disability Determination Bureau