



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MSI/158571

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2014, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03, to review a decision by the Department of Health Services' Division of Health Care Access and Accountability (Department) in regard to Medical Assistance (MA), a telephonic hearing was held on July 22, 2014.

The issue for determination is whether the Department properly discontinued petitioner's state SSI-MA benefits on the basis that he was determined no longer eligible for federal SSI from the Social Security Administration (SSA).

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: Melissa Sherry (written submission)

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. He has been receiving state SSI-MA as a "1619b" recipient.
2. On May 19, 2014 a notice was issued to petitioner indicating that his state SSI-MA was ending because the SSA had found him no longer eligible for MA under the 1619(b) status. The notice

also stated that his SSI MA would be extended until June 30, 2014 so that it could determine if he was eligible for MA under other rules. The agency provided petitioner an application to complete so that the MA could be determined and continued, if eligible. Exhibit 2.

3. According to the State SSI Analyst, the SSA has petitioner being placed in a non-payment status code of N04 (member's non-excludable resources exceed Title XVI limitations) retroactive to March 2010. Exhibit 1.
4. On June 25, 2014 the agency issued another notice to petitioner stating that his SSI-MA would be ending June 30, 2014 because the agency had not received the MA application. Exhibit 3.

DISCUSSION

Section 1619 of the Social Security Act applies to severely impaired persons who work. See 42 U.S. Code §1382h; see also *Medicaid Eligibility Handbook*, §25.5, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. A 1619(b) status is afforded to working individuals who do not receive a SSI check but are still eligible for SSI-MA. Id. Losing 1619(b) status is considered the same as losing SSI eligibility. Id.

The SSA notified the state that petitioner is no longer receiving federal SSI because they determined he has non-excludable resources that exceed Title XVI limitations. Because he is not eligible federally, he is not eligible at the state level. Therefore, petitioner is not currently eligible for SSI-MA and it was correct to terminate the state benefit.

Petitioner indicated he was continuing to pursue his case with the SSA. If he is again placed in federal pay status, he will again be eligible for state SSI-MA on that basis. Should he still have concerns about the appeal, petitioner is encouraged to contact his local Social Security office to confirm he filed an appeal of the federal decision denying his SSI. If petitioner missed the filing deadline based upon confusion with this state SSI appeal, he should take a copy of this decision to the Social Security office and request that agency reopen his case. He may also wish to ask what information he can expect next from the Social Security Administration – (1) assignment to an Administrative Law Judge, (2) scheduling of a preliminary hearing, or (3) scheduling of a hearing.

As stated above, I simply do not have the authority to override the federal determination. I certainly understand that petitioner would suffer from the denial of Medicaid. However, I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

Petitioner allowed this administrative law judge to see if his MA was continued, however, because he did not complete the application, the agency was unable to continue MA. Petitioner indicated he would reapply.

CONCLUSIONS OF LAW

The Department properly discontinued petitioner's SSI MA on the basis that he was determined no longer eligible for federal SSI from the Social Security Administration.

THEREFORE, it is

ORDERED

The petition for review herein 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 21st day of August, 2014

\sKelly Cochrane
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 August 21, 2014.

Division of Health Care Access and Accountability
State SSI