FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/160770

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Iron County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on October 27, 2014.

The issue for determination is whether petitioner is "disabled" in accordance with federal Social Security standards.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 62 year old resident of Iron County.
2. Petitioner applied for MA on August 13, 2013. By letter dated June 2, 2014, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on September 18, 2014.
3. Prior to or concurrently with the MA application, petitioner also applied for Social Security (SSA) disability benefits and/or Supplemental Security Income (SSI). Those benefits were

denied on May 16, 2014, with findings of no disability. The denial was upheld, following petitioner's request for reconsideration, on September 18, 2014.

4. The record does not indicate any new medical impairment, nor any substantiated worsening of the impairments, which was not considered in the Social Security decisions.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A State Medicaid (MA) agency 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 agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. A review of the record indicates that 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).

Even if an individual alleges that his condition has worsened since the most recent SSA decision of no disability, DHA may not have jurisdiction. If an individual alleges less than 12 months after the most recent SSA determination denying disability that his condition has changed or deteriorated since that SSA determination, DHA may make an independent determination of disability for purposes of MA only if one of the following is true:

> (1) The individual has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations; or,
> (2) The individual no longer meets the nondisability requirements (such as the income and asset limits) for SSI but may meet the state's nondisability requirements for MA.

See, 42 C.F.R. § 435.541(c)(4)(iii) (1997).

Thus, even if the petitioner alleged that there has been a worsening of the impairments, there is no evidence that either of the above alternatives is true in the petitioner's case. Therefore, DHA is bound by the SSA decision made September 18, 2014, and must follow it. Because petitioner has been denied Social Security/SSI following a finding of no disability, I must conclude that petitioner is not eligible for MA at this time. If the petitioner wins an appeal of the SSA decision, he would be eligible for MA from the date of onset for SSI, assuming he meets all other requirements. The petitioner may also reapply for MA.

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

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 21st day of November, 2014.

_____

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on November 21, 2014.

Iron County Department of Social Services
Disability Determination Bureau