



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact

DECISION

MDD/162246

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by them Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on January 7, 2015.

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

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (50 years old) is a resident of Marathon County, Wisconsin.
2. On May 2, 2014 petitioner applied for MA on the basis of disability. By a letter dated August 14, 2014 DDB found that petitioner was not disabled. On August 27, 2014 petitioner filed a *Medical Assistance -- Reconsideration Request -- Adult*, but the DDB affirmed its determination of not disabled.

3. Petitioner applied for Supplemental Security Income ["SSI"; a.k.a. Title 16] and Social Security Disability Insurance ["SSDI"; a.k.a. Title 2] with the Social Security Administration ["SSA"]. SSA determined that petitioner was not disabled and denied her application for SSI and SSDI. Petitioner requested reconsideration from SSA. SSA reconsidered and again determined that petitioner was not disabled and again denied her application for SSI and SSDI. Petitioner requested a Hearing before an SSA Administrative Law Judge ["ALJ"]. A Hearing was held and on January 15, 2014 the SSA ALJ determined that petitioner was not disabled and denied her application for SSI and SSDI. Petitioner has requested that the SSA Appeals Council review the SSA ALJ's decision and that request is pending.
4. Petitioner does not allege a disabling condition different from or in addition to that considered by SSA; she does not allege that the SSA has refused to consider an alleged change or deterioration in his condition; she does not allege that she no longer meets the nondisability requirements for SSI.

DISCUSSION

A person may be eligible for MA if they are blind or disabled. A finding of disability must be in accordance with federal social security (SSI/SSDI) standards. See, Wis. Stat. § 49.47(4)(a)4. (2011-12). Because the standards are the same, a finding of no disability for Social Security (SSI/SSDI) purposes is binding on a State Medicaid ["MA"] agency. 42 C.F.R. § 435.541(b)(1) (2012). Exceptions may occur only if certain conditions exist such as: allegations of a disabling condition different from or in addition to that considered by SSA; or, allegations that the person's condition has changed or deteriorated since the SSA determination. If the person alleges that his or her previously considered condition has changed or deteriorated it must be the case that SSA has refused to consider the new allegations or it must be more than 12 months after the most recent SSA determination and the person has not applied to SSA for a determination with respect to those allegations. None of the exceptions apply here. See, 42 C.F.R. § 435.541(c)(4) (2012); see also, U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989).

Petitioner has been denied SSI and SSDI following a finding of no disability by the SSA and none of the exceptions apply. Therefore, it must be concluded that petitioner is not disabled for purposes of MA. If petitioner has new information or evidence affecting previous SSA determinations she should contact the SSA and supply the SSA with that information. See, 42 C.F.R. § 435.541(b)(2) (2012).

At the January 7, 2015 Hearing in this matter petitioner testified that she had been diagnosed with fibromyalgia on August 22, 2014. However, that is not a new condition for her. She has been suffering chronic pain "all over" for 6 years. Medical records dated May 6, 2013 and September 9, 2013 make mention of the possibility of fibromyalgia.

CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4)(a)4. (2011-12).

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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 15th day of January, 2015

\sSean P. Maloney
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 January 15, 2015.

Marathon County Department of Social Services
Disability Determination Bureau