



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/165971

PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2015, 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 June 18, 2015, at Kenosha, Wisconsin.

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 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 or about January 20, 2015, the Petitioner filed an application for Social Security Disability Income (SSDI), stating that she became disabled due to severe anxiety, macular degeneration (vision loss), hearing loss, type II diabetes and high blood pressure. (DDB file; testimony of Petitioner)

3. On February 10, 2015, the Petitioner filed an application for disability-based Medicaid benefits, stating that she became disabled due to anxiety, macular degeneration, diabetes and high blood pressure. (DDB file; testimony of the Petitioner)
4. On March 9, 2015, the Social Security Administration (SSA) denied the Petitioner's application for SSDI benefits. (DDB file; testimony of the Petitioner)
5. On March 10, 2015, the Disability Determination Bureau (DDB) sent the Petitioner a notice advising her that her application for Medicaid benefits was denied. (DDB file; testimony of the Petitioner)
6. On April 13, 2015, the Petitioner filed a request for reconsideration of the denial of her Medicaid application, indicating that she was also suffering from a severe hearing loss and had difficulty following directions. (DDB file; testimony of the Petitioner)
7. On May 8, 2015, the DDB again denied the Petitioner's application for Medicaid benefits and on May 12, 2015, the file was forwarded to the Division of Hearings and Appeals for review. (DDB file; Testimony of Petitioner)
8. The Petitioner also filed a request for reconsideration of her SSDI application with the SSA sometime in April 2015. That request for reconsideration is still pending. (DDB file; testimony of the Petitioner)

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. Estate of Gonwa ex rel Gonwa v. DHFS, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

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 her 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 Medicaid benefits within a month of her application for SSDI and her application for SSDI benefits was based upon the same disabling conditions listed in her application for

Medicaid. The SSA denied Petitioner's request for benefits within 12 months of her application for Medicaid. There is no indication in the record that the Petitioner's condition has changed since the SSA denied her application for benefits in March 2015 and even if Petitioner's condition has changed, there is no evidence that the SSA has refused the Petitioner's request for reconsideration. 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.

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 where 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

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 Milwaukee,
Wisconsin, this 19th day of June, 2015.

\sMayumi M. Ishii
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 June 19, 2015.

Kenosha County Human Service Department
Disability Determination Bureau