



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/166232

PRELIMINARY RECITALS

Pursuant to a petition filed February 26, 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 23, 2015, at Kenosha, Wisconsin.

The record was held open until June 26, 2015, to give the Petitioner an opportunity to supplement the record with information regarding her request for reconsideration of the SSA decision denying her request for SSDI, but no documentation was received by the designated deadline.

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: No Appearance

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On April 1, 2014, the Petitioner submitted an application for Disability-based Medicaid benefits, alleging a disability caused by Post-Traumatic Stress Disorder (PTSD), depression and anxiety. (Testimony of Petitioner; DDB file)
3. On October 27, 2014, the Petitioner submitted an application for Social Security Disability Income (SSDI), alleging a disability caused by depression, anxiety, PTSD, Explosive Anger Disorder, Borderline Personality Disorder and back pain. (Testimony of Petitioner; DDB file)
4. On or about January 28, 2015, the Social Security Administration (SSA) denied the Petitioner application for SSDI benefits. (Id.)
5. On February 2, 2015, the Disability Determination Bureau (DDB) sent the Petitioner a notice, indicating that her application for Medicaid benefits was denied. (DDB file; Testimony of Petitioner)
6. On February 26, 2015, the Petitioner filed a request for reconsideration of the DDB decision, alleging increased depression and anxiety and issues with back pain. (Id.)
7. Around this time the Petitioner also filed a request for reconsideration of the SSA decision. (Testimony of Petitioner)
8. On May 21, 2015, the DDB again denied the Petitioner's application for Medicaid benefits and on May 26, 2015, the DDB forwarded the Petitioner's file to the Division of Hearings and Appeals for review. (Testimony of Petitioner; DDB file)

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 and SSDI benefits based upon the same disabling conditions related to depression, anxiety, PTSD and back pain. The SSDI application listed other ailments as well. The SSA denied Petitioner's request for benefits within 12 months of her April 2014 application for Medicaid. There is no evidence that the Petitioner's condition has changed significantly since the January 2015 denial of her SSA application and though the Petitioner testified that she has filed for reconsideration of the SSA's determination, there is no evidence that they have denied the Petitioner's request for reconsideration or otherwise refused to take into consideration her current circumstances. 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 29th day of
June, 2015.

\sMayumi M. Ishii
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 June 29, 2015.

Kenosha County Human Service Department
Disability Determination Bureau