



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/167435

PRELIMINARY RECITALS

Pursuant to a petition filed May 04, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on August 18, 2015.

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

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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.
2. On or about September 26, 2014 petitioner applied for disability through the state MA program.
3. By letter dated April 17, 2015, the Disability Determination Bureau (DDB) found that petitioner was not disabled for **state** disability MA. Petitioner sought reconsideration, but the DDB affirmed its determination on or about July 16, 2015. The file was then forwarded to the Division of Hearings and Appeals to schedule a hearing for petitioner. That hearing is the subject of this decision.

4. Prior to or concurrently with the state disability MA application, petitioner also applied for **federal** Social Security Disability Insurance (SSDI – Title 2). That application was processed separately through the Social Security Administration.
5. The Social Security Administration initially determined petitioner was not eligible for SSDI on September 10, 2014, and a reconsideration of petitioner’s case resulted in a second denial by the Social Security Administration on December 12, 2014.
6. The petitioner does not allege any new medical impairment other than the impairments considered in the Social Security decision.

DISCUSSION

To be eligible for **state** MA disability benefits, a person between the ages of 18 and 65 must be blind or totally and permanently disabled. A disability determination is based upon the conclusion that the individual is:

Unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

20 C.F.R. § 416.905

“Substantial, gainful activity” was defined in 2014 as earning \$1070, or more, and in 2015 as \$1820, or more through some type of employment.

In addition, Wis. Stat. § 49.47(4)(a)4, declares that a **state** finding of total and permanent disability for MA purposes must be in accordance with **federal SSDI standards**. **SSDI** is a **federal** insurance program operated by the Social Security Administration for workers whom it determines are disabled. In order to receive SSDI benefits, an individual must have had earnings from which Social Security deductions were taken in at least 20 quarters (3 month periods) during the last ten years. The federal regulations provide that a finding of no disability for SSDI purposes, made within 12 months of an application for state MA, is binding on the state MA agency because the standards for federal and state disability are the same. 42 C.F.R. § 435.541(c). Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions which have been presented to the Social Security Administration. Unfortunately for petitioner, none of those 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). The information provided at hearing is not different from what was provided to the Social Security Administration.

Because petitioner has been denied SSDI following a finding of no disability by the federal Social Security Administration within one year of the application for state MA disability, I must conclude I do not have jurisdiction to consider the merits of petitioner’s disability appeal. Therefore it must be determined petitioner is not eligible for state MA disability at this time.

Petitioner testified that she had appealed the federal decision separately to the Social Security Administration (SSA) for a hearing before a federal administrative law judge. Should petitioner prevail at the federal level and is found disabled, she would qualify nonfinancially as disabled for state MA.

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.

CONCLUSIONS OF LAW

That petitioner is not disabled as that term is used for state disability MA purposes pursuant to Wis. Stat. §49.47(4).

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 Milwaukee,
Wisconsin, this 19th day of August, 2015

\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 19, 2015.

Waukesha County Health and Human Services
Disability Determination Bureau