



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED] |  
[REDACTED]

**DECISION**  
Case #: MDD - 175171

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**PRELIMINARY RECITALS**

On June 24, 2016, the above petitioner filed a hearing request under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Department of Health Services Disability Determination Bureau, regarding an application for Elderly, Blind, Disabled (EBD) Medicaid benefits. The hearing was held on July 21, 2016, by telephone.

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 the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED] |  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: DDB file

Winnebago County Department of Human Services  
220 Washington Ave.  
PO Box 2187  
Oshkosh, WI 54903-2187

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

### FINDINGS OF FACT

1. Petitioner is a resident of Winnebago County.
2. On December 17, 2015, the Petitioner applied for Social Security Disability Income (SSDI), alleging a disability caused by her bi-polar disorder. (DDB file; Testimony of the Petitioner)
3. On January 28, 2016, the Petitioner applied for Medicaid, alleging that she is completely disabled by her bi-polar disorder. (DDB file; Petitioner's testimony)
4. On February 26, 2016, the Social Security Administration (SSA) denied the Petitioner's application for SSDI. (DDB file; Petitioner's testimony)
5. On February 29, 2016, the DDB denied Petitioner's Medicaid application. (DDB file; Testimony of Petitioner)
6. On April 1, 2016, the Petitioner filed a request for reconsideration of the SSA denial. To date, the SSA has not yet made a decision on Petitioner's request for reconsideration. (Testimony of Petitioner)
7. On April 5, 2016, the Petitioner filed a request for reconsideration of the DDB denial of her Medicaid application. (DDB file; Testimony of Petitioner)
8. On June 21, 2016, the DDB affirmed its original determination and on June 24, 2016, it forwarded the file to the Division of Hearings and Appeals for administrative review. (Id.; DHA file)
9. Petitioner has been hospitalized and has had adjustments to her medication since the SSA denied her application for SSDI. The Petitioner has made the SSA aware of these changes in her health condition/health care. (Petitioner's testimony)

### 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 alleging a disability caused by bi-polar disorder. She also filed an application for SSDI that indicated she was disabled by bi-polar disorder. The SSA denied Petitioner's request for SSDI benefits within 12 months of her application for Medicaid benefits. Though the Petitioner has since been hospitalized and there have been adjustments to the Petitioner's medication in an effort to control her symptoms, there is no indication that the SSA has refused to consider those changes in circumstances. Petitioner testified that she has filed a request for reconsideration with the SSA and informed them of the change in her condition/healthcare, but that the decision on reconsideration is still pending. 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, **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 21st day of July,  
2016

\s \_\_\_\_\_  
Mayumi 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 July 21, 2016.

Winnebago County Department of Human Services  
Disability Determination Bureau