



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]

DECISION

MGE/143132

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 15, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Crawford County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on September 27, 2012, at Prairie du Chien, Wisconsin.

The issue for determination is whether the Administrative Law Judge has jurisdiction to assist the petitioner with his desired Presumptive Disability MA Reconsideration Request.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Frances Mezera

Crawford County Department of Human Services  
225 N Beaumont Rd., Suite 326  
Prairie Du Chien, WI 53821

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Crawford County.
2. The petitioner filed a Presumptive Disability MA application on March 15, 2012. He was found to be eligible for Presumptive Disability MA in April, with an effective date of March 15, 2012.

3. On May 14, 2012, the county agency was advised by the Disability Determination Bureau that the petitioner was found to be not disabled. Also, on May 14, 2012, the DDB issue a “personalized decision notice” to the petitioner at his correct address, which included Reconsideration Request information. On May 30, 2012, the county agency issued written notice to the petitioner advising that his Presumptive Disability MA would be discontinued effective June 30, 2012. The petitioner appealed from that discontinuance at the local agency on August 1, and the local agency forwarded that document to DHA on Wednesday, August 15, 2012.
4. The petitioner has not filed a new MA disability application after June 30, 2012. The petitioner did file a federal SSI/Social Security Disability application with the Social Security Administration on May 15, 2012. That application is still pending.

### **DISCUSSION**

Presumptive Disability MA is a short-term MA certification for a hospitalized/institutionalized or acutely ill person who is awaiting a final MA disability decision:

Presumptive Disability  (PD) is a method for temporarily determining a disability for an individual while a formal disability determination is being done by DDB .

Presumptive disability is determined either by the DDB, or in some circumstances, by the IM worker. The regular disability application process ( [5.3 Disability Application Process](#) ) must still be completed for persons with a presumptive disability. A presumptive disability decision stands until the DDB makes its final disability determination.

When the regular disability determination is denied by DDB, a new presumptive disability determination cannot be made for that individual unless there has been a change in the person’s condition.

*Medicaid Eligibility Handbook (MEH)*, §5.9.1. The state Medicaid statute offers no guidance on treatment of serial Presumptive Disability MA requests, or Presumptive Disability Reconsideration requests. *See*, Wis. Stat. §§ 49.45-.47.

The petitioner acknowledges that his Presumptive Disability MA application was denied, but complains that he was not given notice as to his ability to file a Reconsideration Request with the DDB. This Administrative Law Judge made post-hearing contact with the DDB. Their records indicate that the appropriate notification was issued to the petitioner on May 14, 2012. At this point (at the time of filing the fair hearing request), the petitioner’s 45 day time limit for requesting Reconsideration on the Presumptive Disability MA has expired.

Because the petitioner’s SSI/SSDI application is still pending at the DDB, the petitioner could submit any updated medical information for further review to the fax # 1-800-423-1939, attn. C.X.X., with the petitioner’s name and Social Security number indicated. A successful SSI application would, of course, result in MA nonfinancial eligibility.

### **CONCLUSIONS OF LAW**

1. This Administrative Law Judge lacks the authority to assist the petitioner with filing a Presumptive Disability MA Reconsideration Request, where the PD MA denial was more than 45 days from the date of filing a hearing request.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 30th day of October, 2012

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Nancy J. Gagnon  
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 October 30, 2012.

Crawford County Department of Human Services  
Division of Health Care Access and Accountability