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

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In the Matter of

[REDACTED]

DECISION

MDD/144859

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on January 17, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals has authority to make a determination the merits of Petitioner's Medicaid disability based application where there is a concurrent Social Security Administration denial of disability.

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: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Sheboygan County.
2. Petitioner applied for Medicaid alleging disability on or about October 25, 2011. The application was forwarded to the Disability Determination Bureau (DDB). The DDB found that Petitioner

was not disabled as the Medicaid program uses that term. The DDB so notified the Petitioner via letter dated January 19, 2012. Petitioner sought reconsideration, but the DDB affirmed its original determination.

3. The Petitioner has applied for Social Security benefits. He was denied those benefits on or about October 25, 2012. The medical conditions noted in the Medicaid and the Social Security applications are the same.

### DISCUSSION

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 Disability Insurance Benefits (DIB) and/or Supplemental Security Income (SSI) standards. See, Wis. Stat. § 49.47(4)(a)4. Because the standards are the same, a finding of no disability for Social Security DIB and/or SSI purposes made within 12 months of the MA-Disability application is binding on a State Medicaid (MA) agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. None of the 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).

Though right at the 12 month mark, has been denied Social Security Disability Insurance Benefits following a concurrent Social Security finding of “no disability”. This I must conclude that Petitioner is not eligible for MA –Disability. If the Petitioner is successful in a federal agency appeal, or he re-applies for DIB and/or SSI, and is successful and found “disabled” under Social Security regulations, he would then be disabled for MA-Disability purposes too. In that event, he should inform the Disability Determination Bureau or his county agency and request MA-Disability again informing the agency of that disability finding. He would then need to meet financial testing for MA eligibility. At present, the MA Program is bound by the federal determination of October 2012, that he is not “disabled” for at least 12 months after a final decision by the federal agency. At present, that decision appears to be the final decision of record.

Finally, I also note that though there is a representative noted in Petitioner’s Division of Hearings and Appeals file as reflected above, Petitioner never indicated that he had a representative and there was no contact made with the Division of Hearings and Appeals by a representative seeking inclusion in this hearing.

### CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to make a determination on the merits of Petitioner’s Medicaid disability based application where there is a concurrent Social Security Administration denial of disability.

**THEREFORE, it is**

**ORDERED**

That this appeal 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 served and 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 Milwaukee,  
Wisconsin, this 28th day of February, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 28, 2013.

Sheboygan County Department of Human Services  
Disability Determination Bureau  
[ssamsa@hrserase.com](mailto:ssamsa@hrserase.com)