



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

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In the Matter of



DECISION

MDD/146886

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 6, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on February 19, 2013, at Eau Claire, Wisconsin. The record was left open for 30 days at the petitioner's request.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Eau Claire County.
2. The petitioner applied for medical assistance based upon a disability on January 10, 2012. The Disability Determination Bureau most recently denied her application on January 23, 2012.
3. The petitioner alleges multiple sclerosis, depression, and anxiety.

4. The petitioner is 47 years old. She graduated from high school and can read and write the English language.
5. The petitioner recently had a heart attack. It is unclear how much this has limited her ability to function.

### DISCUSSION

The petitioner seeks medical assistance based upon a disability. To qualify as disabled, she must meet the disability standard set by Supplemental Security Income (SSI) regulations. Wis. Stat. § 49.47(4)(a)4. The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. She is disabled if she cannot engage in any substantial gainful activity because of a medically determinable physical or mental condition that will, or has, lasted at least twelve months. The Disability Determination Bureau determines if an applicant meets this definition by evaluating in sequence her current employment status, the severity of her medical condition, and her ability to return to vocationally relevant past work or to adapt to new forms of employment. 20 C.F.R. § 416.905 and § 416.920.

The SSI regulations require a five-step process. First, if the person is working at a job that is considered to be substantial gainful employment, she will be found to be not disabled without further review. If she is not working, the Bureau must determine if she has a “severe impairment.” A severe impairment is one that limits a person’s ability to do basic work activities. 20 C.F.R. § 416.921. The petitioner is not working and the Bureau conceded that she has a severe impairment.

The Bureau was then required to determine whether she had an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The petitioner alleges that she has multiple sclerosis, anxiety, and depression. Multiple sclerosis is an impairment listed at Appendix 1, § 11.09. Anxiety and depression are affective disorders defined at § 12.04.

I cannot find a definitive diagnosis of multiple sclerosis in her file, and, although there is evidence of mental problems, it is questionable whether she meets the listing. However, I am not going to rule on this at this time because at the hearing she alleged that she recently had a heart attack. Depending upon the severity, this could meet one of the cardio listings in § 4.00 or leave her unable to do sedentary work, which as someone under 50 would also qualify her as disabled under the final step of the evaluation process. *See* 20 C.F.R. § 416.960 and 20 C.F.R. Pt. 404, Subpt. P. App. 2, Rule 201.23. Because the Disability Determination Bureau has not evaluated this allegation, I will remand the matter to them with instructions to reevaluate her claim. In doing so, it must review her latest medical reports and may conduct any further medical examinations it determines are necessary. She must cooperate with this process. If the Bureau continues to find she is not disabled, she may file a new appeal.

### CONCLUSIONS OF LAW

There is insufficient evidence to determine whether the petitioner is disabled.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the Disability Determination Bureau with instructions that it reevaluate the petitioner’s claim in light of her allegation that she has had a heart attack. The petitioner shall cooperate with the Bureau if it determines that she requires further medical examinations. If she disagrees with the Bureau’s decision, she may file a new appeal. The Bureau shall render its decision within 30 days of the date of this decision. It may deny the claim if the petitioner does not cooperate with them in obtaining whatever evidence it needs to evaluate her situation.

## 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 Madison,  
Wisconsin, this 25th day of February, 2013

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\sMichael D. O'Brien  
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 February 25, 2013.

Eau Claire County Department of Human Services  
Disability Determination Bureau