



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████  
██████████  
██████████  
██████████

DECISION

MDD/155330

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephone hearing was held on March 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████  
██████████

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for MA on April 12, 2013. By letter dated November 6, 2013, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on February 4, 2014.
3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits and/or Supplemental Security Income (SSI). Those benefits were denied on reconsideration January 17, 2014, with findings of no disability.

4. The record does not substantiate any new medical impairment, nor any worsening of the impairments considered in the Social Security review.

### 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/SSI standards. See Wis. Stat. § 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 MA 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).

Even if an individual alleges that his or her condition has worsened since the most recent SSA decision of no disability, DHA may not have jurisdiction. If an individual alleges less than 12 months after the most recent SSA determination denying disability that his or her condition has changed or deteriorated since that SSA determination, DHA may make an independent determination of disability for purposes of MA if petitioner alleges less than 12 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 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; and/or
- (B) He or she no longer meets the nondisability requirements for SSI but may meet the State's nondisability requirements for Medicaid eligibility.

See, 42 C.F.R. § 435.541(c)(4)(iii) (1997).

Thus, even if the petitioner alleged that there has been a worsening of the impairments, there is no evidence that either of the above alternatives is true in the petitioner's case. Therefore, DHA is bound by the SSA decision made on January 17, 2014, and must follow it. Because petitioner has been denied Social Security/SSI following a finding of no disability, I must conclude that petitioner is not eligible for MA at this time. If the petitioner wins an appeal of the SSA decision, he would be eligible for MA from the date of onset for SSI, assuming he meets all other requirements. The petitioner may also reapply for MA.

### CONCLUSIONS OF LAW

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

**THEREFORE, it is**

**ORDERED**

That the petition for review 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, 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 Madison,  
Wisconsin, this 29th day of April, 2014.

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\sPeter McCombs  
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 April 29, 2014.

Milwaukee Enrollment Services  
Disability Determination Bureau