



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

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In the Matter of

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

DECISION

MDD/155334

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Ashland County Department of Human Services in regard to Medical Assistance, a hearing was held on April 15, 2014, at Ashland, Wisconsin.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

Attorney Ellison F. Hitt  
6045 N Green Bay Avenue  
Glendale, WI 53209

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
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 Ashland County.
2. The petitioner applied for medical assistance based upon a disability on September 19, 2013. That claim was denied with a finding that she was not disabled on December 26, 2013.
3. The petitioner also applied for SSI/SSDI benefits. The Social Security Administration denied that claim with a finding that she was not disabled on September 5, 2013.

4. The petitioner's medical assistance application did not allege any new disabling condition that has arisen since the Social Security Administration denied her claim.
5. The petitioner contends that her condition has deteriorated since the Social Security Administration denied her claim. However, the Social Security Administration has not refused to consider this allegation after being requested to do so.

### DISCUSSION

A person between 18 and 65 who is not pregnant and has 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 agency. Exceptions may occur only if certain conditions exist such as allegations of a different disabling condition or changes in the previously considered conditions. *See* 42 C.F.R. § 435.541(c); *see also* U.S. Department of Health and Human Services commentary, 54 Fed. Reg. 236 (1989). The petitioner does allege that her condition has deteriorated since it was last reviewed. However, I can overturn a decision under these circumstances only if she applied to the Social Security Administration for reconsideration and it refused to consider the deterioration. 42 C.F.R. § 435.541(c)(4)(ii). This has not happened. Therefore, I must uphold the agency's decision.

I note that if the one of the Social Security Administration's administrative law judges finds the petitioner disabled, this medical assistance decision will automatically be overturned.

### CONCLUSIONS OF LAW

The petitioner is not disabled.

**THEREFORE, it is**

**ORDERED**

The petitioner's appeal 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 21st day of April, 2014

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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 April 21, 2014.

Ashland County Department of Human Services  
Disability Determination Bureau  
Attorney Ellison Hitt