



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

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In the Matter of

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

DECISION

MDD/157458

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 29, 2013, 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 June 11, 2014, at Eau Claire, 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:

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

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 Eau Claire County.
2. The Disability Determination Bureau most recently denied the petitioner's application for medical assistance with a finding that she was not disabled on May 5, 2014.
3. The petitioner is diagnosed with multiple sclerosis.
4. The petitioner works about 30 hours a week and earns \$9 per hour plus tips.

## DISCUSSION

To qualify as disabled, the petitioner 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. To be considered engaged in substantial gainful employment a person generally must make at least the following income:

- (ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:
  - (A) The amount for the previous year, or
  - (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998.

20 CFR §416.974 (b)(2).

Using this formula and rounding to the nearest \$10, the Social Security Administration set the 2014 wage limit at \$1070 per month. <http://www.socialsecurity.gov/oact/cola/sga.html> The petitioner works 30 or 31 hours a week and earns \$9 an hour plus tips. This means that even without tips, her income is at least \$270 per week. Multiplying this by 4.3, the number of weeks in an average month (52 weeks in a year divided by 12 months is 4.3), puts her monthly income at \$1,161 per month. Even if her weekly earnings are multiplied by four rather than 4.3, her monthly earnings exceed \$1,070 before accounting for her tips. This means that she is engaged in substantial gainful activity. Thus, although she has significant physical problems associated with multiple sclerosis, she cannot be considered disabled and is therefore ineligible for medical assistance.

## CONCLUSIONS OF LAW

The petitioner is ineligible for medical assistance based upon a disability because she is engaged in gainful employment.

**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 1st day of July, 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 July 1, 2014.

Eau Claire County Department of Human Services  
Disability Determination Bureau