



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/158961

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 04, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on September 25, 2014, at Racine, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Racine County.
2. On February 25, 2014, the Petitioner submitted a Medicaid Disability Application (MADA) to the Disability Determination Bureau (DDB). In the application, she alleged disability based on “mental health, bipolar, panic attacks, anxiety, weakness from foot surgeries, asthmatic, post traumatic stress, schizophrenia, severe depression, depression, scoliosis.” She alleged a disability beginning February 21, 2014. Petitioner also reports that she has been employed at BEI

Electronics since October 4, 2013 and is currently employed there 40 hours/week at a rate of \$15/hour. Petitioner also reported she is a high school graduate. Petitioner's employment at BEI ended in March, 2014.

3. On March , 2014, the Petitioner applied to the Social Security Administration (SSA) for disability benefits. On April 25, 2014, the SSA denied the Petitioner's application based on its finding that she is not disabled. Petitioner filed for reconsideration of the SSA determination and the determination was upheld on July 3, 2014. Petitioner has filed an appeal of the SSA determination and the matter is pending.
4. On May 1, 2014, the DDB denied the Petitioner's MADA based on a finding that she is not disabled. On June 4, 2014, the Petitioner filed a Reconsideration Request.
5. Petitioner is 40 years old. Her diagnoses include bipolar disorder, anxiety disorder, tarsal/carpal tunnel syndrome, chronic pain.

### DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for medical assistance, the applicant has the initial burden to establish he or she met the application requirements.

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. Stats. §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 Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition different from, or in addition to, that considered by SSA in making its determination; or
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve 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 original 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.***

42 CFR 435.541(c)(4) (emphasis added).

Here, Petitioner applied for Social Security Disability benefits within a month of her application for Medicaid disability. Her application for Social Security Disability benefits was based upon the same disabling conditions listed in the application for Medicaid disability. The SSA denied Petitioner's request for benefits within 12 months of the application for Medicaid, both on initial application and reconsideration. Petitioner has filed a hearing request for SSA to reconsider the matter.

Petitioner contends that her condition has gotten worse since she was denied SSDI initially on April 25, 2014 and on reconsideration on July 3, 2014. She submitted two additional one-page medical reports at the hearing. One of these reports is dated August 19, 2014 and the other is dated August 21, 2014.

As noted above, the Bureau is bound by SSA's determination of disability if the finding is made within 12 months of the MA application unless the Petitioner alleges and a change or deterioration in the Petitioner's condition since the SSA determination and SSA has refused to consider the allegations. In this case, a hearing request has been filed and SSA has not yet reviewed the additional information. Therefore, I conclude this case does not fall within the exceptions noted above because the SSA matter is still pending and SSA has not, at this point, refused to consider the new allegations.

Based on the information provided, I conclude the DDB is bound by the SSA determination and therefore properly concluded the Petitioner is not disabled. Petitioner was advised at the hearing that if, upon appeal, SSA determines the Petitioner is disabled, the DDB will be bound by that determination and she can re-apply for Medicaid disability.

### **CONCLUSIONS OF LAW**

The DDB is bound by the SSA determination and therefore properly concluded the Petitioner is not disabled.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's 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, Room 651, 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 14th day of October, 2014

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\sDebra Bursinger  
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 October 14, 2014.

Racine County Department of Human Services  
Disability Determination Bureau  
Attorney Donald Mayew