



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/169927

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 16, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Pierce County Department of Human Services in regard to Medical Assistance, a hearing was held on December 14, 2015, at Ellsworth, 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:

[REDACTED]  
[REDACTED]  
[REDACTED]

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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 Pierce County.
2. The Disability Determination Bureau most recently denied the petitioner's request for medical assistance based upon a disability on October 27, 2015.
3. The petitioner has had a series of strokes that have affected her physical and mental health. She reports that she frequently cries and has little control over her emotions.

4. The Disability Determination Bureau has not performed a mental health examination on the petitioner.

### DISCUSSION

The petitioner seeks to be found disabled in a medical assistance matter. To be found disabled, she must meet the Supplemental Security Income (SSI) definition of disability found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. § 49.47(4)(a)4, Stats. A person 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. To determine if this definition is met, the following are evaluated in sequence: the claimant's 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 petitioner has recently had a series of strokes. She testified that she frequently cries and has little control over her emotions. The Disability Determination Bureau has not conducted a mental health examination, which makes it difficult to determine how reliable her assertion is. I will remand this to the bureau within instructions to conduct a mental health examination on her and redetermine whether she is disabled.

### 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 to schedule and perform a mental health examination on the petitioner within 30 days of the date of this decision and determine within 10 days of conducting the examination whether she has any mental health issues, or combination of mental health and physical issues, that render her disabled. If the Disability Determination Bureau determines that she is not disabled, she may file a new appeal. This order is contingent upon the petitioner cooperating with the Disability Determination Bureau and agreeing to hold the record open long enough for it to examine her and issue a new disability determination. If she does not cooperate and agree to leave the record open, her matter will be 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 18th day of December, 2015

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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 December 18, 2015.

Pierce County Department of Human Services  
Disability Determination Bureau