



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/171612

PRELIMINARY RECITALS

Pursuant to a petition filed January 04, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on March 03, 2016, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not eligible for the Medicaid Purchase Plan because she is not 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

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. On April 1, 2015, the Petitioner submitted a Medicaid Disability Application (MADA) to the Disability Determination Bureau. In the application, the Petitioner alleged disabilities including hypothyroidism, COPD (FEV1 rating of 2.24), spots on a lung and adrenal gland. Functional

limitations include shortness of breath, intolerance to tobacco smoke, lifting restrictions, endurance, intolerance to heat. She has difficulty with climbing stairs and bending. She has a visual impairment and wears corrective lenses. She also has a hearing impairment due to a clogged left ear.

3. Petitioner is employed by [REDACTED] and [REDACTED] as a personal care worker. She reported in her application that she works 38 – 50 hours/week. She listed her job duties to include helping clients to get dressed, bathe, transfer, clean the house (including vacuuming and mopping), grocery shop.
4. In her application, Petitioner reported that on a good day, she can walk, stand, sit, stoop, kneel, crouch, handle/grasp items for 8 hours. She reported she is unable to climb or crawl.
5. On December 4, 2015, the agency issued a notice to the Petitioner that it determined she is not eligible for the Medicaid Purchase Plan (MAPP) because she does not meet the disability requirements.
6. On January 4, 2016, the agency received a Request for Reconsideration from the Petitioner.

DISCUSSION

The Medicaid Purchase Plan allows those who are disabled but wish to work to receive medical assistance. Wis. Stat. § 49.472. Recipients pay a certain amount of their income toward Medicaid premiums. Among the requirements to receive benefits under the program is the following: “The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.” Wis. Stat. § 49.472(3)(g). The Petitioner meets this requirement because she works approximately 40 hours per week as a personal care worker.

To qualify as disabled, even under the Medicaid Purchase Plan, a person must meet the definition of that term as it is used for Supplemental Security Income (SSI). Wis. Stat. § 49.47(4)(a)4. 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. Specifically, to be disabled means to be unable to 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 applicant’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 are evaluated in that sequence. 20 C.F.R. § 416.905 and § 416.920.

Employment alone cannot bar an applicant from receiving purchase plan benefits or the entire purpose of the program would be undermined. Therefore, in these matters it is necessary to move directly to the next step, which is for the Bureau to determine if the Petitioner has a “severe impairment.” A severe impairment is one that interferes with a person’s ability to do basic work activities. 20 C.F.R. § 416.921. The Bureau found that petitioner has a severe impairment.

The Bureau was then required to determine whether the petitioner has an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The Bureau found that she meets or equals none of the listings. The Petitioner’s primary impairments include COPD and hypothyroidism.

The listings state as follows with regarding to COPD:

Respiratory listings 3.00

These listings are examples of common respiratory disorders that are severe enough to prevent a person from engaging in any gainful activity. When an individual has a medically determinable impairment that is not listed, an impairment which does not meet a listing, or a combination of impairments no one of which meets a listing, we will consider whether the individual's impairment or combination of impairments is medically equivalent in severity to a listed impairment. Individuals who have an impairment(s) with a level of severity which does not meet or equal the criteria of the listings may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful activity. Evaluation of the impairment(s) of these individuals will proceed through the final steps of the sequential evaluation process.

...

3.02 Chronic pulmonary insufficiency.

A. Chronic obstructive pulmonary disease, due to any cause, with the FEV1 equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Height without shoes (centimeters)	Height without shoes (inches)	FEV1 equal to or less than (L, BTPS)
154 or less	60 or less	1.05
155-160	61-63	1.15
161-165	64-65	1.25
166-170	66-67	1.35
171-175	68-69	1.45
176-180	70-71	1.55
181 or more	72 or more	1.65

Petitioner's FEV1 rating is 2.24 so she does not meet the listing for COPD.

With regard to the Petitioner's hypothyroidism, the listings state as follows:

Part 9.00 Endocrine Disorders

...

2. Thyroid gland disorders affect the sympathetic nervous system and normal metabolism. We evaluate thyroid-related changes in blood pressure and heart rate that cause arrhythmias or other cardiac dysfunction under 4.00; thyroid-related weight loss under 5.00; hypertensive cerebrovascular accidents (strokes) under 11.00; and cognitive limitations, mood disorders, and anxiety under 12.00.

There is no evidence that the Petitioner has thyroid-related changes in blood pressure or heart rate causing arrhythmias, thyroid-related weight loss, hypertensive cerebrovascular accident or cognitive limitations, mood disorders or anxiety. Therefore, she does not meet the listing for hypothyroidism.

If the impairment does not meet the listings, the Bureau must next determine whether she can perform past jobs. 20 C.F.R. § 416.960. Although disqualifying an applicant from the purchase plan merely because she can work would undermine the program's stated goal of allowing disabled persons to work, past decisions have looked at whether the person requires significant accommodations to do the work. See DHA Decisions No. MAP-60/48115, No. MDD-03/58813, MAP-9/68575, and MAP/141868.

The petitioner has worked as a personal care worker for the past 15 years. She works at least 38 hours/week and frequently works as much as 50 hours/week. She does difficult, physical work that includes bathing clients, transferring and lifting clients, dressing clients, doing housekeeping which includes mopping floors and vacuuming. She receives no special accommodations except that she no longer does yardwork for her clients. She finds stair climbing and bending difficult but is able to do those activities. The evidence establishes that the Petitioner is able to perform past and current jobs. A disability finding is based upon one's ability to work, and a background of successful employment demonstrates this ability. Though the Petitioner has several medical conditions that have an impact on her ability to perform jobs, there is no indication that she requires significant accommodations to successfully perform her very physically demanding job. The petitioner not only has demonstrated an ability to work without accommodations in the past, she continues to do so now. Therefore, I must find that she is not disabled.

In making this decision, I do not question that the petitioner has significant problems that require frequent medical care. However, because the law holds that a finding of disability depends primarily upon a person's ability to work and the need for accommodations to do that work rather than solely upon her medical needs, I must uphold the Disability Determination Bureau's decision.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is not eligible for the Medicaid Purchase Plan because she is not disabled.

THEREFORE, it is

ORDERED

That 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 Milwaukee,
Wisconsin, this 6th day of May, 2016

\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 May 6, 2016.

Kenosha County Human Service Department
Division of Health Care Access and Accountability