



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/173816

PRELIMINARY RECITALS

Pursuant to a petition filed January 31, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on June 07, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled for MA purposes.

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:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. Petitioner is 49 years old. She has alleged to be or has been diagnosed with depression, anxiety, agoraphobia, social anxiety disorder, fibromyalgia, chronic pain, IBS, ADHD, GERD, hypothyroidism, kidney disease and interstitial cystitis.
3. On or about April 4, 2014 petitioner applied for disability through the state MA program. She did not apply for federal disability through the Social Security Administration.

4. On December 17, 2015 the Disability Determination Bureau (DDB) concluded petitioner was not disabled, as it did not appear her impairments were severe enough to be considered disabling.
5. On January 31, 2016 petitioner filed a MA-Reconsideration Request.
6. On or about April 19, 2016 her reconsideration request was denied by the DDB.

DISCUSSION

A finding of disability must be in accordance with federal social security/SSI standards for State MA purposes. See Wis. Stat. §49.47(4)(a)4. To be eligible for MA as disabled, a person must meet the definition of that term as it is used for SSI. See Wis. Stat. §49.47(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. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will result in death, or will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of his/her medical condition, and their ability to return to vocationally relevant past work or adapt to new forms of employment are evaluated in that sequence. See 20 C.F.R. §416.905 and §416.920.

In this case, the Disability Determination Bureau (DDB) determined that petitioner's impairment(s) were not severe. This means that it was the DDB's determination that petitioner is not disabled because her present conditions do not form an impairment which can be legally determined to be severe.

Under the regulations established to interpret Title XVI, a claimant's conditions must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 C.F.R. §416.920.
2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. §416.920(c).
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 C.F.R. §416.920(d).
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. 20 C.F.R. §416.920(f).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual functional capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 C.F.R. §416.920(f).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

To be found disabled, an individual must have a medically determinable severe impairment(s). To be considered severe, the impairment or combination of impairments must have more than a minimal effect on the individual's physical or mental abilities to do basic work activities. 20 C.F.R. §416.921

The DDB has determined that the petitioner's conditions, singly or combined, do not constitute a "severe impairment" under the Social Security Regulations, and thus, she fails to meet step two of the sequence. Therefore, a determination of "not disabled" is correct if the examiner finds that this determination was properly made.

The petitioner reports the conditions listed in Finding of Fact #2, above. However, she has not established that her impairments have more than a minimal impact on her physical and mental abilities to do very basic work activities or perform activities of daily living. She testified to having bad days, but that on good days she can do some cleaning, cooking, watch TV, get outside to take walks, grocery shops, drives, and gets herself to her medical appointments. In short, the medical evidence is not strong enough in this case to support a finding of disability. I do not mean to diminish the challenges she faces, however, the evidence is simply not there.

I concur with the DDB determination. These conditions do not establish a severe impairment. She has not demonstrated with medical and clinical evidence that the conditions have any more than a minimal effect on her overall basic physical and mental abilities to do very basic work activities. The instant application is denied. If the petitioner later determines that her ability to perform basic work activities is significantly impaired, she may always file a new application for MA – Disability in the future.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

That the petitioner is not disabled under MA – Disability and Social Security Administration rules and regulations.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby 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 8th day of June, 2016

\sKelly Cochrane
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 June 8, 2016.

Outagamie County Department of Human Services
Disability Determination Bureau