



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

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In the Matter of

[REDACTED]

DECISION

MAP/142883

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 29, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau (DDB or Bureau) in regard to Medical Assistance (MA) or MAPP, a hearing was held on September 17, 2012, by telephone. A hearing set for August 31, 2012, was rescheduled by the petitioner.

The issue for determination is whether the petitioner is disabled for MA/MAPP purposes.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau  
722 Williamson St.  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Outagamie County.

2. Petitioner applied for MA on December 20, 2011. By letter dated June 1, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on August 6, 2012.
3. DDB's original basis for determining that the petitioner was not disabled was code N32—"individual has the capacity for substantial gainful activity, other than relevant past work."
4. The petitioner is currently employed.
5. The petitioner suffers from an affective disorder and unspecified anxiety disorder. The petitioner has been diagnosed with depression since her teenage years. Her condition is treated with the generic versions of the medications Prozac and Xanax, but no psychotropics are being used. She lives alone in the community and has undergone one psychiatric hospitalization (December 2011). The hospitalization was related to suicidal thoughts. She has a history of alcohol abuse, and continues to drink in moderation. The petitioner is bothered by sleep disturbance, decreased energy, and difficulty in concentration. Manic episodes have not been documented in her medical records from the last year. The petitioner is able to independently perform her "activities of daily living" (e.g., eating, dressing, toileting, showering), and has a mild functional limitation in this area due to occasionally running out of energy to perform these tasks. She has moderate difficulties in maintaining social functioning, and a moderate limitation in maintaining concentration. The petitioner is maintaining a normal weight at five feet, four inches tall and 115 pounds.
6. Regarding the anxiety disorder, the petitioner has not displayed motor tension, hyperactivity, apprehensive expectation, vigilance/scanning, irrational fear of objects or situations, recurrent panic attacks, or recurrent and intrusive recollections of a traumatic experience.
7. The petitioner is in satisfactory general physical health, and does not allege a physical impairment.
8. The petitioner's past relevant employment was as a cashier, bag-maker, clerical worker, and customer service representative.
9. The petitioner's impairments, in total, constitute a "severe" impairment. DDB asserts that the petitioner retains the residual functional capacity to perform low-stress, heavy work.
10. The petitioner, age 27 at the time of hearing, completed the twelfth grade, and is of average or better intelligence. Her previous employment was in semi-skilled occupations, with non-transferable skills.
12. The petitioner has not applied for SSI or Title II Social Security Disability benefits within one year preceding the instant MA application.

### DISCUSSION

The standards used for determining disability are set forth at 20 C.F.R. §416.901 and 20 C.F.R. 404, Appendix 1. To be found disabled, the petitioner must pass several steps in a prescribed disability evaluation procedure. 20 C.F.R. §416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." If she is, she will be evaluated for MAPP eligibility, which ends with the inquiry as to whether she meets a Listing standard. If she is not, she passes the first test in the sequential evaluation. The second requirement in the evaluation is that she has a severe impairment expected to last for at least 12 months. A severe impairment is one which significantly limits a person's physical or mental abilities to do basic work activities. I conclude (and the DDB has conceded by using the denial code N32) that the petitioner has a severe impairment.

The third step in the sequential evaluation is the determination as to whether the petitioner's impairments meet or are equivalent to one of the disability listing standards found in Appendix 1. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of her ailments meets or equals a listed standard. The petitioner's condition does not meet a standard at Listing 12 (online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>), which pertains to mental health:

**12.02 Organic mental disorders:** ...

**12.03 Schizophrenic, paranoid and other psychotic disorders:** ...

**12.04 Affective disorders:** Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following: ...

*Id.*, §12.04. I conclude that the petitioner *currently* has only three of the needed depressive symptoms: appetite disturbance, sleep disturbance, decreased energy, and difficulty in concentration. This conclusion is supported as to the last three symptoms by the psychological evaluation of the petitioner performed by Dr. Kurt Weber in April, 2012. Manic symptoms have not been documented, but they are not necessary to reach a conclusion that a person is disabled.

The “B” criterion mentioned above require that the applicant have “marked” difficulty in two of the following domains: activities of daily living, maintaining social functioning, or maintaining concentration/persistence/pace. The petitioner does not have marked difficulty in any of these domains. Although the petitioner has a moderate limitation in social functioning, she does not have a marked limitation. She is able to interact appropriately with family, and was appropriate during the hearing. Therefore, she does not meet the “B” criterion. The “C” criterion pertains to *multiple* episodes of inpatient treatment over the last year, which is not applicable here. Thus, the petitioner does not meet the test posed by this mental health Listing.

The petitioner also does not meet the criteria at §12.06 in the Listings for anxiety-related disorders. See, Finding #6. A MAPP analysis for an employed person making above the “substantial gainful activity” amount ends here. I will follow through to the end of the disability analysis for a person who is not earning above the substantial gainful activity level.

In the fourth step of the evaluation process, DDB considers whether an applicant can return to prior employment. If the applicant *can* return to one of her prior jobs, she is not disabled. If the applicant *cannot* return to any of her prior jobs, the analysis moves to the fifth step. The petitioner and DDB agree that the petitioner cannot return to some of her prior jobs.

The fifth step of the evaluation process considers whether the petitioner, when her age, education, job skills and exertional capacity are considered, retains the ability to do *any* work in the economy. In disability jargon, the petitioner is a younger person, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. She has no communicative limitations. The DDB asserts that the petitioner has the ability to exert herself at the level required for heavy work, although a low-stress environment without a lot of public contact is preferable. The remaining exertional categories are medium, light, or sedentary work. Light work involves the occasional lifting of 10 pounds. Even if I limited the petitioner to light work, the result from the SSA’s Medical-Vocational Guidelines would still be a determination of “not disabled.” See Appendix 2, rule 202. 20 - .21.

### **CONCLUSIONS OF LAW**

Petitioner is not disabled as that term is used for MA and MAPP purposes pursuant to Wis. Stat. § 49.47(4).

**THEREFORE, it is**

**ORDERED**

That the petition 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, 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 Madison,  
Wisconsin, this 17th day of December, 2012

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\sNancy J. Gagnon  
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, 2012.

Outagamie County Department of Human Services  
Division of Health Care Access and Accountability