



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/143458

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2012, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on October 3, 2012, by telephone.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Petitioner's Representative:

Kelly M. Long
Aging & Disability Resource Center
300 S. Adams Street
Green Bay, WI 54301

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 47-year-old resident of Brown County.
2. Petitioner applied for MA on March 22, 2012. By a letter dated July 2, 2012, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on August 23, 2012.
3. Petitioner has suffered from cancer, although currently she is asymptomatic. In some measure related to her cancer treatment she has neuropathy, short-term memory loss, fatigue, heart pain, depression, anxiety, and suicidal ideations.

4. Petitioner also has long-standing alcoholism. The DDB found that she meets a listing for mental impairments, but that because alcoholism is a contributing factor the mental impairments cannot be the basis for a disability finding.
5. Physically petitioner is capable of doing sedentary work. She is a high school graduate with two years of technical school in computer work.

DISCUSSION

To be eligible for MA, an adult female under age 65 must be disabled, blind, pregnant, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. Wis. Stat., §49.47(4)(a)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, 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.

The SSI regulations require a five-step process. First, if the person is working at a job that is considered to be substantial gainful employment, she is found to be not disabled without further review. If she is not working, the DDB must determine if she has a "severe impairment." A severe impairment is one that limits a person's ability to do basic work activities. 20 C.F.R. §416.921. The DDB found that petitioner is not working and that she has a severe impairment.

The third step is to determine if the impairment meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are disabling without additional review. 20 C.F.R. §416.925(a). The DDB found that petitioner meets a mental health listing but that it cannot be a basis for a finding of disability because alcoholism is a contributing factor. See 42 U.S.C. 423(d)(2)(C). Instead the DDB must review petitioner's disability status without regard for her alcoholism.

The DDB ordered a psychological report which was done in June, 2012. The doctor found that petitioner did well on memory testing and did not display any difficulty on mental status exams. He found that she had adequate cognitive capacity to understand and carry out instructions, but that she had to avoid situations where she might experience a lot of anxiety. Thus taking alcoholism out of the equation petitioner's mental status would not meet any mental health listing.

The fourth and fifth steps occur if the impairments do not meet the listings. The DDB must determine whether the person is able to perform past jobs. If not, then the agency must determine if the person can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that petitioner could not fully perform past work, but could perform other work.

The DDB found that physically petitioner was capable of doing light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. The DDB cited Rule 202.20, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.21 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The problem for petitioner is that even if she were limited to sedentary work, the lowest level, she still would be found not disabled. Sedentary work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a). A certain amount of walking and standing can be involved in sedentary work. A person of petitioner's age and training who is able to do only sedentary work is not disabled. Rule 201.21.

I must affirm the DDB's determination. With the effects of alco holism removed from the determination, petitioner's is capable of doing basic sedentary work.

I note that petitioner now has a social security/SSI application pending. If she is found disabled in that application, the MA program will follow that determination.

CONCLUSIONS OF LAW

PETITIONER is not disabled as required for MA eligibility.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby 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 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 Madison,
Wisconsin, this 16th day of October, 2012

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals

c: Kewaunee County Dept of Social Services - email
Department of Health Services - email
Courtney E. Gray, HRS ERASE Inc - email
Kelly M. Long, ADRC



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The preceding decision was sent to the following parties on October 16, 2012.

Kewaunee County Department of Social Services
Disability Determination Bureau
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