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

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In the Matter of



DECISION

MDD/145414

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 22, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on December 13, 2012, at Kenosha, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (the DDB) correctly denied Petitioner's application for disability-based Medicaid (MA).

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: DDB file

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. Petitioner filed an application for disability-based Medicaid (MA) on January 26, 2012, alleging impairments caused by heart disease, specifically atrial fibrillation . (Petitioner's testimony, DDB file)
3. On May 18, 2012, the DDB sent Petitioner a notice, denying her claim. (DDB file)

4. The Petitioner filed a request for reconsideration on June 22, 2012. (DDB file)
5. On November 15, 2012, the DDB again denied Petitioner's application and on November 21, 2012, forwarded Petitioner's file to the Division of Hearings and Appeals for review.

### DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for Medicaid as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). § 49.47(4)(a)4, *Wis. Stats.* Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. The definitions of disability in the regulations governing MA require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment. Thus, while the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence in determining impairment, the doctors' opinions as to whether the petitioner is disabled for the purposes of receiving MA are not relevant.

It appears from review of the file that the DDB found Petitioner to suffer from a severe impairment that will last 12 months or longer, but it also found that despite the impairment, Petitioner is still able to engage in substantial meaningful activity based upon the tests described below.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability 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 CFR 404.1520 (b)*.
2. An individual who does not have a "severe impairment" will not be found to be disabled. A condition is not severe if it does not significantly limit physical or mental ability to do basic work. *20 CFR 416.921(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 CFR 404.1520(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 CFR 404.1520(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 function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. *20 CFR 404.1520(g)*.

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence.

#### TEST 1

The first test asks whether an individual is working and engaging in substantial gainful activity.

“Substantial activity” is defined as, “work activity that involves doing significant physical or mental activities. Your work may be substantial, even if it is done part time basis.....” *20 CFR 404.1572(a)*

“Gainful work activity” is defined as, “work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.” *20 CFR 404.1572(b)*

Petitioner is not currently working. As such, she passes test 1.

#### TEST 2

The DDB file is not entirely clear, but it appears that the DDB found Petitioner to have a severe impairment, since it assessed her residual functional capacity. Accordingly, it is found that Petitioner passes test 2.

#### TEST 3

The question presented here is whether petitioner’s impairment meets the criteria listed in Appendix 1 to Subpart P of Part 404 of Code of Federal Regulation (CFR). This is more commonly referred to as the “listing”. If Petitioner meets the aforementioned criteria, tests 4 and 5 do not need to be done; he qualifies as disabled. If Petitioner does not meet the listing criteria, then he must pass tests 4 and 5 to be considered disabled.

Petitioner testified that her primary complaint was her heart condition. Appendix 1, subsection 4.00 deals with impairments caused by disease of the cardiovascular system. Petitioner does not meet the criteria in this section because she has not been diagnosed with chronic heart failure; ischemic heart disease, systemic congenital heart disease, chronic venous insufficiency or Peripheral Artery Disease. Petitioner suffers from periodic atrial fibrillation.

Based upon the foregoing, it is found that Petitioner does not meet the listings under Appendix 1 to Subpart P of Part 404 of Code of Federal Regulation. Therefore, it is necessary to proceed to tests 4 and 5.

#### TEST 4

The fourth test asks whether Petitioner is capable of work she performed in the past. Per *40 CFR 404.1560 (b)(1)*, the question, more specifically, is did Petitioner engage in substantial gainful activity (significant physical or mental activities for which she could have been paid) within the past 15 years, and if so, can Petitioner continue to perform that work?

The case Development Worksheet indicates that the DDB did not make a determination with regard to past work, because it determined that Petitioner is capable of performing medium work. Petitioner previously worked at a Walmart Deli for 14 years, working nine hour shifts that required her to stand for long periods. Prior to this, Petitioner managed a Dominic’s bakery and worked in a Sam’s Club café/snack shop. Petitioner indicated that her atrial fibrillation would not allow her to work at the pace required by her previous employment. Thus, based upon the foregoing, it is presumed Petitioner would have passed test 4.

## TEST 5

This test asks whether Petitioner can perform any other work, despite her impairment. The DDB determined, based upon Petitioner's age, education and residual functional capacity that she would be able to perform medium work.

The definition of medium work is found at 20 C.F.R. § 404.1567 and provides as follows:

(c) Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighting up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

Whether Petitioner, a 64 year-old woman, can regularly lift 25-50 pounds is somewhat debatable. However, based upon Petitioner's testimony, she should be able to at least perform sedentary work.

The definition of sedentary work is found at 20 C.F.R. § 404.1567 and provides as follows:

(a) Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Petitioner testified that she does sit and "rest" for considerable periods of time, sometimes reading or watching television. According to Petitioner, she is able to do some light cooking; she is able to make her bed and do some light cleaning, such as wiping counters and loading the dishwasher. Petitioner also testified that she is able to drive and does go grocery shopping with her son, which can take up to an hour. Petitioner testified that she will go shopping on her own for incidental items.

Based upon the foregoing, it is found that Petitioner is able to perform sedentary work and is, therefore, not disabled for MA purposes, at this time.

Petitioner should note that as of her 65<sup>th</sup> birthday in 2013, she will become non-financially eligible for MA, based upon her age and she should reapply for MA at that time.

### CONCLUSIONS OF LAW

The DDB correctly denied Petitioner's application for disability-based Medicaid because she is not disabled for purposes of MA at this time.

**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 Milwaukee,  
Wisconsin, this 26th day of December, 2012.

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\sMayumi M. Ishii  
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 26, 2012.

Kenosha County Human Service Department  
Disability Determination Bureau