



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

MDD/143546

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 11, 2012, 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 and Wisconsin Disability Determination Bureau (DDB or Bureau) in regard to Medical Assistance (MA), a hearing was held on December 13, 2012, by telephone. A hearing set for October 31, 2012, was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is disabled for MA 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

**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 February 13, 2012. By letter dated April 27, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on August 27, 2012.

3. DDB's basis for determining that the petitioner was not disabled was code N30 – impairment not severe.
4. The petitioner is employed at an [REDACTED]'s restaurant. The "substantial gainful activity" line is \$1,040 in 2013, and the petitioner is earning gross wages that are slightly under \$1,000 monthly at this time.
5. The petitioner has been diagnosed with psychological problems. The petitioner does not suffer from an organic mental disorder, mental retardation, a somatoform disorder, or autism or another developmental disorder. Her documentation establishes that the petitioner suffers from bipolar disorder with psychotic features. The petitioner experiences intermittent depressed mood, boredom, and fatigue. Her thought processes are linear and goal oriented. She has a history of two significant, prolonged episodes of erratic, manic behavior: one in Mexico in 2009, and one in Florida in 2011. The petitioner takes the antidepressant medications Abilify (10 mg), Lithium carbonate (300 mg b.i.d.), and Prozac (10mg) for her condition, and is usually compliant with taking medication. She was hospitalized once in November, 2011, for eleven days, due to erratic behavior while living alone in Florida. The petitioner has received monthly counseling therapy sessions, with which she is compliant. The petitioner is able to perform her "activities of daily living." She currently has a mild limitation in maintaining concentration, but no "marked" limitations in any domain.
6. The petitioner was evaluated by Dr. Indu Dave, in December 2012, as a one-month follow-up to the petitioner's hospital discharge. She noted that manic symptoms were no longer present. Another follow-up with Dr. Dave in April 2012 concluded that manic symptoms were not currently present, that medication side effects were not bothering the petitioner, and that she displayed no evidence of "thought or perceptual disturbance." There was no evidence of thoughts of harming herself or others.
7. The petitioner did not document any physical restrictions in her ability to do work. There are no restrictions on the petitioner's ability to grasp or pull objects, and she has no chemical sensitivities.
8. The petitioner's past relevant employment was as a waitress and bartender in a variety of restaurants.
9. The petitioner's impairments, in total, constitute a "severe" impairment. She cannot return to some of her prior employments due to the stress level at a very busy or very high-end restaurant. DDB does assert that the petitioner could continue to be a waitress in other types of restaurants.
10. The petitioner, age 25, has a 12<sup>th</sup> grade education. Her previous employment was in semi-skilled and unskilled occupations.
11. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this 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." She is not; therefore, 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 (DDB disagrees) 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 12. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that her ailment does not meet or equal a listed standard. The petitioner's condition does not meet the relevant Listing 12 standard, which pertains to the mental health 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, *et seq.*, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm> .

The petitioner sometimes has two of the depressive symptoms above, related to depression: decreased energy, and difficulty concentrating in stressful situations. Manic symptoms were observed in 2009 and again in the fall of 2011, but not currently . We must therefore turn to the “C” criteria. “C” refers to “repeated episodes of decompensation, each of extended duration.” Decompensation episodes are medically documented incidents that require significant medication changes or hospitalization//halfway house placement. “Repeated episodes” of decompensation means three episodes, lasting at least two weeks, within one year, per Social Security standards. That has not occurred here. Thus, the petitioner’s condition does not satisfy the above criteria.

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. DDB asserts that the petitioner can return to some of her prior jobs, and I agree. Therefore, she is not disabled at this time. The analysis therefore does not need to go to the fifth and final step.

[FYI: 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. The exertional categories are sedentary, light and medium work. See Appendix 2 of the federal rule.]

### **CONCLUSIONS OF LAW**

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

**THEREFORE, it is ORDERED**

That the petition for review 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 11th day of January, 2013

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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 January 11, 2013.

Outagamie County Department of Human Services  
Disability Determination Bureau