



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MDD/143756

PRELIMINARY RECITALS

Pursuant to a petition filed August 6, 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 in regard to Medical Assistance, a hearing was held on December 13, 2012, by telephone. A hearing set for October 31, 2012, was rescheduled at the petitioner's request. Documents subsequently submitted by the petitioner were received and considered by the Administrative Law Judge.

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

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



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 January 27, 2012. By letter dated July 13, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on September 11, 2012.

3. DDB's basis for determining that the petitioner was not disabled was code N32 – a severe impairment that does not prevent substantial gainful activity in a different occupation.
4. The petitioner was not employed at the time of application.
5. The petitioner has been diagnosed with psychological problems. The petitioner does not suffer from an organic mental disorder, a psychotic disorder, mental retardation, a somatoform disorder, or autism or another developmental disorder. Her documentation establishes that the petitioner suffers from bipolar disorder, characterized decreased energy and suicidal thoughts. Manic symptoms have not been documented. The petitioner's sleep pattern is erratic. Her thought processes are linear and goal oriented. The medical records indicate a "remote history" of depression," with the most recent history of significant depression occurring following the unexpected death of the petitioner's son in December 2011. The petitioner takes the medications Paxil, Klonopin, Zolpidem, and others, for her condition. The petitioner was hospitalized for attempted suicide on January 2, 2012, after cutting her wrists. Eight days into the January hospitalization, she attempted it again. She was hospitalized from June 27 – July 6, 2012, followed by a one month inpatient crisis center stay, following a suicide attempt via drug overdose. The petitioner has received some counseling therapy, with good attendance and medication compliance. The petitioner is able to perform her "activities of daily living" with mild restrictions. Per DDB, she has moderate limitations in social functioning and maintaining concentration, but no "marked" limitations in these domains.
6. The petitioner was evaluated by Dr. Chandra Shakar in August 2012. Shakar concluded that the petitioner was not displaying abnormal thought processes, poor memory or concentration, hallucinations, delusions, mania, or current inability to perform ADLs. The doctor did note "significant anxiety" and an inability to care for herself when experiencing a depressive episode. The patient's ability to understand/remember instructions, respond appropriately to supervision/co-workers, and respond appropriately to routine work pressures, was characterized as "fair."
7. At five feet, four inches tall, the petitioner weighs approximately 270 pounds. The petitioner had a heart attack in October 2011, resulting in placement of two stents; her current ejection fraction measurement (68%) is not disabling. The treating physician's impression from notes dated 11/14/2012 was "no acute cardiopulmonary disease." She also has Stage III renal failure (sometimes referred to in her medical records as Stage II), but does not receive dialysis and has not undergone transplantation. In October 2012, the petitioner's creatinine was at 1.49 mg/dl, which does not meet the disability listing level. In September 2012, the petitioner had only *one* reading of albumin at 3.0 gm/dl. She is also bothered by hypertension, high cholesterol, controlled asthma, arthritis and a sore right knee (spurring). A cane is used for ambulation. The petitioner had had multiple emergency hospitalizations in the fall of 2012 for various physical problems, none of which proved to be disabling. 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 as a fast food cashier and nurse.
9. The petitioner's impairments, in total, constitute a "severe" impairment. She cannot return to some of her prior employments. DDB does assert that the petitioner could do other medium unskilled, low-stress work.
10. The petitioner, age 47 at the time of hearing, has a 12th 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 (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 12. I have reviewed the listing standards that might apply to the petitioner’s ailments, and conclude that none of her ailments meets 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 has at least four of the depressive symptoms above, related to depression: difficulty in concentration, decreased energy and suicidal thoughts, and sleep disturbance. However, no treatment provider has recently observed manic symptoms. 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, as the petitioner has had two episodes of decompensation leading to hospitalization. The lack of a third psychiatric hospitalization, plus Dr. Shakar’s August report (which did not describe a person who met the listing), understandably led the DDB to conclude that the mental health disability listing test had not been met.

Following the June 2012 suicide attempt and hospitalization, the petitioner was moved into a transitional housing program (Innovative Step Down Apartment Program). During the course of her ongoing contact with Innovative staff, it became clear that the petitioner could not live independently without their daily intervention. Throughout the fall of 2012 (through date of hearing record closure in December), Innovative staff were visiting the petitioner multiple times daily to assure medication compliance. They frequently had to awaken the petitioner to get her to take medication. This appears to be a “highly supportive living arrangement,” to use the term from the listings, and the petitioner appears to have a continued need for such an arrangement. Although the petitioner’s history does not precisely match the mental health disability listing, I conclude that her condition, when considered with her other physical problems (no one of which is disabling by itself), is the equivalent of a listing condition. Therefore, I conclude that the petitioner is disabled at this time.

CONCLUSIONS OF LAW

1. Petitioner is disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4).
2. The petitioner has been disabled since January 2, 2012.

THEREFORE, it is

ORDERED

That the petition for review is remanded to the county agency with instructions to continue the processing of the petitioner’s January 2012 MA application in accord with the Conclusions of Law above.

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 15th day of January, 2013

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 15, 2013.

Outagamie County Department of Human Services
Disability Determination Bureau