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

In the Matter of

[REDACTED]

DECISION

MDD/144229

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a telephone hearing was scheduled for November 5, 2012. Following three rescheduling requests by the petitioner, a telephone hearing was ultimately held on January 23, 2013, at Madison, Wisconsin.

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

There appeared at that time and place 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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. Petitioner applied for MA on or about October 4, 2011. By a letter dated May 22, 2012, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on October 15, 2012.

3. Petitioner has suffered from cardiac arrest, and reports that his cardiac issues seem well managed. Petitioner reports a deteriorating spinal condition, resulting in pain and weakness. Petitioner has indicated that his physician is reluctant to pursue surgical remedies due to petitioner's age and history of cardiac arrest.
4. Physically petitioner is capable of doing sedentary work. He is a college graduate, and is presently employed as an IT consultant. Recent employment information indicates that petitioner earned an hourly rate of \$31.00. Petitioner reports that his income has fallen by one-half to 2/3 as a result of his spinal condition.

DISCUSSION

To be eligible for MA, an adult male under age 65 must be disabled, blind, 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 his medical condition, and his 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, he is found to be not disabled without further review. If he is not working, the DDB must determine if he 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 working at a job that is considered to be substantial gainful employment. As such, further application of the five-step process was unnecessary.¹

Information provided by the respondent and by petitioner's testimony indicated that petitioner was working as an IT consultant. At his rate of pay, he would gross \$5,332.00 monthly (\$31.00 per hour x 40 hours weekly x 4.3 weeks). In 2012, the disability "substantial gainful activity" level was \$1,690.00 monthly; in 2013 it is \$1,740.00. Petitioner testified credibly that his monthly income had been reduced by as much as 2/3 due to his spinal condition. However, a reduction of 2/3 of the calculated full time pay (\$1,778.00) is still in excess of the substantial gainful activity level. As such, I must affirm the DDB's determination.

At hearing, petitioner was encouraged to pursue disability benefits per a social security/SSI application. I note that, if he 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.

¹ While not germane to the instant decision, for petitioner's edification, 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 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.

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 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 8th day of March, 2013

\sPeter McCombs
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 March 8, 2013.

Dane County Department of Human Services
Disability Determination Bureau