



FH

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

---

In the Matter of

[REDACTED]

DECISION

MDD/144862

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 18, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marinette County Department of Human Services in regard to Medical Assistance, a hearing was held on January 28, 2013, at Marinette, Wisconsin.

The issue for determination is whether the petitioner is disabled for MA-Disability purposes.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Marinette County.
2. Petitioner is 43 years old.
3. Petitioner is a high school graduate and has one year of technical school in the area of welding.

4. Petitioner has a work history including construction, welding, and remodeling jobs. Petitioner last worked a formal construction job was approximately 2.5 years ago. Petitioner suffered a fall in 1989 that resulted in injuries to his hands and wrist and face.
5. Petitioner also has a history of anxiety and substance abuse.
6. He has done some remodeling jobs for friends or family as recently as last summer because he needed money.
7. Petitioner suffers from back pain, hand pain. He also states that he suffers some memory problems. Petitioner also has pain in his right shoulder. He reports that he cannot sleep on it and that it hurts if he puts his arm above his head.
8. Petitioner is able to go grocery shopping, drive a car, toilet himself, shower himself, brush his teeth, prepare his food. He can get himself to his appointments, he could take a bus on his own to get around town.
9. Petitioner applied for MA-disability on January 12, 2012.
10. Petitioner's was found not disabled by the DDB on April 24, 2012 and reconsideration was denied on October 18, 2012.
11. Petitioner has applied for federal SSA disability benefits but no decision has been made relating to the federal determination.

### **DISCUSSION**

In order to be eligible for MA 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). Wis. Stat. § 49.47(4)(a)4. 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. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner's current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs 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 is severe, that it affects an individual's basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual's testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

### **THE FIVE-STEP DISABILITY DETERMINATION PROCESS**

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but earning less than \$860 per month, proceed to Step 2. 20 C.F.R. § 416.920(b).
2. An individual who does not have a “severe impairment” which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Step 3. 20 C.F.R. § 416.920(c).
3. If the individual’s severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual’s severe impairment does not meet or equal a listing, proceed to Step 4. 20 C.F.R. § 416.920(d).
4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Step 5. 20 C.F.R. § 416.920(e).  
  
(Note, if the individual has marginal education (less than 7<sup>th</sup> grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2).
5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

### **PROCESSING OF PETITIONER'S DISABILITY APPLICATION**

For Step 1, petitioner is not working and meets this step.

For Step 2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the Bureau applies the following test:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, the petitioner's impairments, combined, are severe, and he meets Step 2, meaning the analysis continued to Step 3.

Under Step 3, the petitioner's conditions do not meet or equal any listed impairment. His condition is far, less than the severity of condition required under the Social Security Administration's *Adult Listings of Impairment*, Part A, at § 1.00, *Musculoskeletal System*.

Turning to Step 4, the DDB conclusions appear to recognize that the petitioner does not possess the ability to return to past work. This means that the analysis drops to Step 5, a consideration of the claimant's "residual functional capacity." The Bureau concluded that he retained the abilities to perform light work.

Generally, this determination is made by application of a guideline tool known as the Social Security residual functional capacity (RFC) "grids", by a vocational consultant, and an additional tool known as the "Physical Residual Physical Functional Capacity Assessment" performed by the Bureau's Disability Examiner and reviewed and approved by a physician Medical Consultant. The "grid" is a table considering, age, education, and past work experience.

A person who is a "younger individual" (age 18 – 49), with limited or less than a high school degree, with a work history in skilled or semi-skilled work, with the past skills not being transferable, is directed by the grids to be found "not disabled". See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at Rule 202.18; [See, Table No.2 – RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)].

The Bureau concluded that even with limitations due to his pain and mobility issues, petitioner could perform other jobs in the economy. I have reviewed the assessment tool, and I find it persuasive. The assessment found no limits in manipulative skills, communication skills, or environmental work factors. It also found that he could occasionally lift 20 lbs., and frequently lift 10 lbs. The assessment also concluded that the petitioner could sit and stand or walk about 6 hours in an 8 hour work day with breaks. Nothing in the clinical or medical records contradicts this finding. Finally, the assessment determined that he had no real limits on his ability to push or pull or to operate hand or foot controls. See, PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT, dated February 1, 2012; see also, PHYSICAL RESIDUAL FUNCTIONAL CAPACITY ASSESSMENT, dated April 16, 2012.

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. Light work includes the functional capacity to perform a full range of light work including the functional capacity to perform sedentary as well as light work. The DDB reviewer concluded that even with his postural limitations limiting stooping and crouching and reaching, that the petitioner could handle the demands of light, unskilled work.

I must concur with the DDB determination that he retained at the time of the denial the residual functional capacity to perform work other than his past work in construction/welding. I must also concur with denial determination as a whole. While the petitioner does have significant limitations and ongoing health issues, I do not believe that these conditions prevent him from engaging in substantial gainful employment at a light work level. The Bureau's determination that he is not disabled is affirmed. If the petitioner believes at any point in the future that his conditions have worsened, he is free to file a new application and/or update his medical record with the Disability Determination Bureau. In addition, he may re-apply at any time in the future.

Petitioner is also reminded that should he be found disabled for purposes of SSI-Disability, the state MA program will follow the federal determination.

**CONCLUSIONS OF LAW**

The petitioner is not disabled for MA-Disability purposes.

**THEREFORE, it is ORDERED**

That this appeal 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 29th day of January, 2013

---

\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 29, 2013.

Marinette County Department of Human Services  
Disability Determination Bureau  
[cogray@bellin.org](mailto:cogray@bellin.org)