



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/145413

PRELIMINARY RECITALS

Pursuant to a petition filed November 12, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a telephone hearing was held on December 18, 2012.

The issue for determination is whether the petitioner 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 Winnebago County. He is currently employed by [REDACTED], as well as [REDACTED] and Winnebago County through the IRIS program. Weekly work hours vary from 40 – 55 hours. He graduated from high school with a degree. He is not the caretaker of any minor children, and has not been found to be disabled or blind by the Social Security Administration. The record does not indicate that petitioner has applied for Social Security benefits at any time during the 12 months prior to his MA – Disability application.

2. On April 3, 2012, the petitioner applied for MA – Disability benefits with the Department.
3. The Disability Determination Bureau issued a Notice on October 19, 2012, finding that the petitioner is “not disabled” under Social Security regulations defining disability.
4. The petitioner requested reconsideration of the disability denial decision on or about November 12, 2012.
5. On November 20, 2012, the Disability Determination Bureau again determined on reconsideration that the petitioner is not disabled.

DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of that term as it is used for SSI purposes. See, WI Stat § 49.47(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 result in death, or 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/her medical condition, and his ability to return to vocationally relevant past work or adapt to new forms of employment are evaluated in that sequence. See 20, C.F.R. § 416.905 and § 416.920.

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 C.F.R. § 416.920.
2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. § 416.920(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 C.F.R. § 416.920(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 C.F.R. § 416.920(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 functional capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 C.F.R. § 416.920(f).

At the hearing, the petitioner testified that he is presently employed. He reports that his “main” employment is through [REDACTED], and he works part-time at [REDACTED]. He also

indicated that he is employed approximately 10 hours per week by Winnebago County through the IRIS program. He stated that he works a total of 40 to 55 hours each week, but does not have a set schedule.

"Substantial Gainful Activity" (SGA) means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. 20 C.F.R. §§ 416.910 & 416.972.

It is generally considered that the earnings from a person's work as an employee will show that the person has engaged in substantial gainful activity if the gross earnings average more than \$1,010 a month in calendar year 2012. (Note: the income level is higher for a blind individual; and this petitioner is not blind.) See also, 20 C.F.R. § 416.974(b)(2)(ii). For basic reference purposes, 40 hours per week at the rate of minimum wage (\$7.25/hour) would result in gross monthly wages of \$1,160.00. Petitioner testified that he works between 40 and 55 hours each week. The record does not demonstrate that petitioner is earning, on average, less than \$1,010 a month from his employment. See, <http://www.ssa.gov/oact/cola/sga.html>. Therefore, he cannot be found disabled at present under the Medical Assistance-Disability Program.

The petitioner fails at step one in the test, and I need not go further in the sequence. He cannot be eligible for MA-Disability at this time, and his appeal must be dismissed.

CONCLUSIONS OF LAW

That the petitioner is not disabled under MA – Disability and Social Security Administration rules and regulations.

NOW, 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 4th day of February, 2013

\sPeter McCombs
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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 4, 2013.

Winnebago County Department of Human Services
Disability Determination Bureau