



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION ON REHEARING

MDD/145795

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a hearing was held on May 20, 2013, by telephone. (Following two rescheduled hearing dates, a hearing set for March 20 was missed by the petitioner, and a dismissal order was entered. The petitioner requested rehearing, which was granted, leading to this May 20 hearing date).

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]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[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 La Crosse County.
2. Petitioner applied for MA on December 26, 2011. By letter dated September 27, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on November 29, 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 slipped, fell, and hit his head in November 2011, sustaining a subarachnoid hemorrhage. He was discharged from the hospital on December 21, 2011. He received inpatient rehabilitation services until March 2012. A psychological evaluation of the petitioner was performed on July 10, 2012 by Rebecca Angle, PhD. She observed that the petitioner's speech, appearance, demeanor, and thought processes were normal. No delusions, preoccupations or hallucinations were reported. Concentration and social skills were assessed as adequate. He reported that he was adequately performing his "self-cares" (e.g., dressing), but complained of bouts of dizziness. Memory testing yielded scores ranging from Average to Borderline, with the average being "Low Average" (77-90). The petitioner voluntarily received inpatient care for depression from March 19-21, 2012, with alcohol intoxication noted at admission. The petitioner also has diagnoses of diabetes mellitus type II, hypertension, and possible coronary artery disease. He smokes cigarettes regularly.

The petitioner was observed to have an abdominal aneurysm measuring 4.8 to 4.9 cm in October 2011. However, there is no medical documentation that the aneurysm is dissecting, increasing in size, causing *persistent* chest pain, or compressing a branch of the aorta supplying the heart or other organ.

6. The petitioner has no limitations with respect to sitting or communicating. He is limited to one to two hours for walking and standing, due to dizziness. Also, he must avoid heights and workplace hazards. Strength and range of motion in all extremities is characterized in 2012 medical records as normal. There are no restrictions on the petitioner's ability to grasp or pull objects, and he has no chemical sensitivities.
7. The petitioner's past relevant employment was as a supervisor for a cleaning company and as a warehouse worker.
8. The petitioner's impairments, in total, constitute a "severe" impairment. He cannot return to his prior employment, per DDB stipulation.
9. The petitioner, age 64 at the time of hearing, has a 12th grade education, plus three years of college. His previous employment was in a semi-skilled occupation with transferable skills.
10. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application. He receives Social Security retirement benefits.

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." He is not; therefore, he passes the first test in the sequential evaluation. The second requirement in the evaluation is that he 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 4 (cardiac) or 12 (mental health). I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of his ailments meets or equals a listed standard. The petitioner's condition does not meet the relevant Listing 4 standard, which pertains to cardiac disorders:

4.01 Category of Impairments, Cardiovascular System

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied. ...

4.04 Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less: ...

4.05 Recurrent arrhythmias, not related to reversible causes, such as electrolyte abnormalities or digitalis glycoside or antiarrhythmic drug toxicity, resulting in uncontrolled (see 4.00A3f), recurrent (see 4.00A3c) episodes of cardiac syncope or near syncope (see 4.00F3b), despite prescribed treatment ...

4.06 Symptomatic congenital heart disease (cyanotic or acyanotic), documented by appropriate medically acceptable imaging (see 4.00A3d) or cardiac catheterization, with one of the following: ...

4.09 Heart transplant. Consider under a disability for 1 year following surgery; thereafter, evaluate residual impairment under the appropriate listing.

4.10 Aneurysm of aorta or major branches, due to any cause (e.g., atherosclerosis, cystic medial necrosis, Marfan syndrome, trauma), demonstrated by appropriate medically acceptable imaging, **with dissection not controlled by prescribed treatment** (see 4.00H6).

4.11 Chronic venous insufficiency of a lower extremity with incompetency or obstruction of the deep venous system and one of the following: ...

4.12 Peripheral arterial disease, as determined by appropriate medically acceptable imaging ...

[emphasis added]

The petitioner's condition does not meet or equal any of the Listing 4.0 standards above. There is no evidence that his aneurysm is dissecting, with persistent chest pain, size increase, or compression of the aorta. See, 4.00H6.

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 his prior jobs, he is not disabled. If the applicant *cannot* return to any of his prior jobs, the analysis moves to the fifth step. The petitioner and DDB agree that the petitioner cannot return to his prior job as a warehouse worker.

The fifth step of the evaluation process considers whether the petitioner, when his 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 person of advanced age, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. He has no communicative limitations. The exertional

categories are sedentary, light and medium work. Light work involves the occasional lifting of 10 pounds, while medium work involves regular lifting of objects of up to 25 pounds. The petitioner is capable of light work. Looking at these limitations, the vocational rule finds the petitioner to be “not disabled.” See Appendix 2, rule 202.07.

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 is dismissed.

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 30th day of May, 2013

\sNancy J. Gagnon
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 May 30, 2013.

La Crosse County Department of Human Services
Disability Determination Bureau