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

In the Matter of



DECISION

MDD/145896

PRELIMINARY RECITALS

Pursuant to a petition filed September 13, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee County Department of Human Services in regard to Medical Assistance, a hearing was held on January 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied disability benefits to the Petitioner.

There appeared at that time and place 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:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On February 7, 2012, the Petitioner submitted an application for Medicaid disability.
3. Petitioner is a 32 year old male. His primary issue with regard to the Medicaid application is chronic severe pain with limited ambulation and weight bearing. He also has a history of acute renal failure and he was dialysis dependent for one month in March, 2012. He has biopsy-proven focal segmental glomerulosclerosis which was responsive to prednisone. In May, 2012, the Petitioner's kidney function was noted to be normal.

4. Petitioner is able to stand approximately 5 - 10 minutes at a time and walk approximately 3 blocks. He complains of almost constant pain in his feet when walking or weight bearing. In addition, he has pain in his shins. His legs sometimes “fall asleep” especially when he’s sitting. He must get up to “shake them out” occasionally. His hands occasionally “lock up” through the day for approximately 5 minutes at a time. Petitioner also has back pain. He is able to lift/carry approximately 10-20 pounds. Range of motion is noted to be intact.
5. Petitioner is able to take out the garbage and do some vacuuming. He babysits for 3 relatives, ages 10, 7 and 2. He has assistance with meals and other household chores. He leaves the house on occasion when he is able. He gets transportation from family members. Petitioner is able to provide his own personal cares. He is able to manage his financial matters. Petitioner has no visual problems, memory problems or mental health issues.
6. Petitioner has a high school diploma. Petitioner’s previous work history includes retail sales, car wash, handyman. His last job was in retail sales in January, 2012.
7. On August 3, 2012, the agency issued a notice to the Petitioner denying his Medicaid disability application.

DISCUSSION

To be eligible for MA, an adult under age 65 must be disabled, blind, pregnant, 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 medical condition, and 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 not working and that he has a severe impairment.

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 DDB found that Petitioner does not meet or equal a listing. I reviewed the listings and found none that Petitioner meets or equals.

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 type of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that Petitioner could not fully perform past work, but could perform other work.

Based on physician reports and assessments, the DDB determined the Petitioner can occasionally lift 10 pounds, frequently lift less than 10 pounds, stand at least 2 hours in an 8 hour workday and sit about 6 hours in an 8 hour workday. The assessments found no postural limitations, no manipulative limitations, no visual limitations, no communicative limitations and no environmental limitations.

The DDB found that physically Petitioner was capable of doing sedentary work by February 7, 2013. Sedentary work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a). A certain amount of walking and standing can be involved in sedentary work. The DDB cited Rule 201.27 which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 201.27 provides that a person of Petitioner's age and training who has a high school diploma with no previous work experience or unskilled work experience is not disabled.

At the hearing, the Petitioner related the same symptoms as noted in his application and in the physical assessments. He believes the pain to be getting worse but no clinical evidence was presented to demonstrate that there are any new symptoms or conditions. Though he has difficulty walking and standing, the evidence suggests that he can do limited amounts of walking and standing throughout the day and therefore meets the criteria for being able to perform some type of sedentary work.

Based on the totality of the evidence and the SSI and MA regulations, I must affirm the DDB's determination.

CONCLUSIONS OF LAW

The DDB properly determined the Petitioner is not disabled.

THEREFORE, it is ORDERED

That the petition be, and hereby 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 Milwaukee,
Wisconsin, this 8th day of February, 2013

\sDebra Bursinger
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 February 8, 2013.

Milwaukee County Department of Human Services
Disability Determination Bureau