



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]

DECISION

MDD/145941

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 27, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Disability Determination Bureau (DDB or Bureau) in regard to Medical Assistance (MA), a hearing was held on January 8, 2013, by telephone. The hearing record was held open for 14 days for possible submission by the petitioner of post-surgical complication documentation.

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]

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 Jefferson County.
2. Petitioner applied for MA and Presumptive Disability MA (emergency, short-term) on September 12, 2012. On October 11, 2012, the petitioner was found eligible for Presumptive Disability MA until such time as a final decision was made by the Bureau. By letter dated November 16, 2012, the

Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on December 12, 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's spleen was removed over seven years ago, following a vehicle accident. In August 2012, he underwent emergency evaluation for lower abdominal pain. He was diagnosed with acute diverticulitis in the sigmoid colon and localized peritonitis. As a result, he underwent surgery in August to remove a portion of the sigmoid colon. Another surgery was performed in August, due to an anastomotic leak, and a stoma appliance was placed. He was then bothered by a post-operative infection into September 2012. He suffered through a bout of pneumonia in October 2012. The petitioner is scheduled to have his ostomy closed in February 2013. His primary surgeon indicated that he should not work through January 1, 2013. The petitioner is five feet seven inches tall, and his weight ranged from 159 to 170 pounds during the fall of 2012. BMI for that height and 159 pounds is 24.9.
6. The petitioner has no limitations with respect to walking, sitting, reaching, or communicating. There are no restrictions on the petitioner's ability to grasp or pull objects, and he has no chemical sensitivities. However, he does have difficulty with lifting, bending, crouching, and climbing stairs.
7. The petitioner's past relevant employment as a truck driver. In that employment, he sometimes lifted 100 pounds or more, and frequently lifted loads of 25 pounds.
8. The petitioner's impairments, in total, constitute a "severe" impairment. He cannot return to his prior employment due to the high exertional requirements involved with loading trucks. DDB does assert that the petitioner could do light work.
9. The petitioner, age 54 at the time of hearing, has a 12<sup>th</sup> grade education. His previous employment was in a semi-skilled occupation.
10. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application.

### **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 5. 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 5 standard, which pertains to gastro-intestinal disorders:

#### **5.01 Category of Impairments, Digestive System**

**5.02 *Gastrointestinal hemorrhaging from any cause, requiring blood transfusion*** (with or without hospitalization) of at least 2 units of blood per transfusion, and occurring at least three times during a consecutive 6-month-period. The transfusions must be at least 30 days apart within the 6-month period. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

**5.03** [Reserved]

**5.04** [Reserved]

**5.05 *Chronic liver disease***, with:

**A.** Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, ...

**5.06 *Inflammatory bowel disease*** ...

**5.07 *Short bowel syndrome*** (SBS), due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter.

**5.08 *Weight loss due to any digestive disorder*** despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

**5.09 *Liver transplantation***. Consider under a disability for one year following the date of transplantation; ...

*Id.*, §5.01 - .09, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm> .

The explanatory notes that accompany the Listing above contain this relevant passage:

4. Surgical diversion of the intestinal tract, including ileostomy and colostomy, does not preclude gainful activity if you are able to maintain adequate nutrition and function of the stoma. However, if you are not able to maintain adequate nutrition, we will evaluate your impairment under 5.08.

The petitioner's condition does not meet or equal any of the Listing 5.0 standards above.

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.

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 approaching advanced age, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. He has no communicative limitations. The DDB asserts that the petitioner has the ability to exert himself at the level required for light work. 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. Looking at these limitations, the vocational rule finds the petitioner to be “not disabled.” See Appendix 2, rule 202.14.

**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 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 19th day of February, 2013

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals  
[REDACTED]



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The preceding decision was sent to the following parties on February 19, 2013.

Jefferson County Department of Human Services  
Disability Determination Bureau