



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/146501

PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Trempealeau County Department of Soc. Services and Wisconsin Disability Determination Bureau in regard to Medical Assistance (MA), a hearing was held on January 31, 2013, by telephone.

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]

Petitioner's Representative:

[REDACTED] (not present at hearing)

[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 Trempealeau County.
2. Petitioner applied for MA on June 20, 2012. By letter dated October 4, 2012, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on January 9, 2013.

3. The petitioner was not working at the time of application, but did become employed on September 28, 2012, as a [REDACTED]. He grosses \$2,193 monthly (\$12.75 per hour x 40 hours weekly x 4.3 weeks). In 2012, the disability “substantial gainful activity” level was \$1,690 monthly; in 2013 it is \$1,740.
4. The petitioner suffers from leg and hip pain, a history of necrotizing fasciitis, and diabetes mellitus. The diabetes is currently under adequate control. The petitioner began having significant difficulty with his right hip and thigh in mid-May 2012. He was given a cortisone shot, which did not help. An MRI of the spine in June 2012 revealed nothing that is causing the petitioner’s hip and thigh pain. However, imaging in 2012 did show mild osteoarthritis in the hip, with right pincer-type femoroacetabular impingement. In June 2012, the petitioner was briefly hospitalized for an abscess/necrotizing fasciitis on his right thigh, which required surgical debridement and antibiotic treatment. This was followed by a nursing home stay of approximately one month for further recovery and rehabilitation, and a skin graft procedure. Range of motion in the upper extremities and left lower extremity are with normal limits. The right lower extremity moves with some limitation. There is no radiculopathy involving the back. The petitioner has not displayed neurological deficits or muscle weakness as a result of his condition.
5. The petitioner has effective ambulation without the use of an assistive device. No medical imaging has shown joint space narrowing, bony destruction or ankylosis of the hip. He has not undergone reconstructive surgery of a major weight-bearing joint. There is no diagnosis in his submitted medical records to establish that he has a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, facet arthritis or vertebral fracture resulting in compromise of a nerve root or the spinal cord. He has not fractured a tarsal bone, an upper extremity, or his pelvis.
6. The petitioner is able to walk, stand and sit adequately. However, he does experience right leg and hip pain after walking, requiring breaks every 10 minutes. He is not currently under a weight lifting restriction. He has extreme difficulty kneeling and climbing stairs.
7. The petitioner’s past relevant employment was as a truck driver. In these jobs, he frequently lifted objects weighing up to 25 pounds or more.
8. The petitioner’s orthopedic impairment constitutes a “severe” impairment..
9. The petitioner, age 37 at the time of hearing, completed the twelfth grade, and took first responder coursework at a technical school. His previous employment was in semi-skilled occupations, with non-transferable skills.
10. The petitioner has not applied for SSI or Title II Social Security Disability benefits within one year preceding the instant 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 at this time, so he cannot be considered disabled from the date that his job began on September 28, 2012. I will only be evaluating his condition for the May 2012 – September 27, 2012 period. 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. The petitioner has difficulty with bending, kneeling, climbing stairs, and walking for his complete eight hour janitorial shift; it is expected that this difficulty will continue for a year. It is questionable as to whether the analysis should proceed beyond this point (the 12-month disability requirement), but I will continue on to give a complete explanation to the petitioner.

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 1. 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 a standard at Listing 1, which pertains to the musculo-skeletal system:

1.01 Category of Impairments, Musculoskeletal

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

...

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, ...;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging,

1.05 Amputation (due to any cause). ...

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 Fracture of an upper extremity with nonunion of a fracture ...

1.08 Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk, or face and head, under continuing surgical management, as defined in 1.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 1.00.

Id., §1.01, *et seq.*, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>. The petitioner's condition does not satisfy the above criteria.

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 cannot return his prior job of being a truck driver.

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 younger person, 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. For a younger person with a high school education, limited to light work due to his hip/leg problem, the result from the SSA's Medical-Vocational Guidelines would still be a determination of "not disabled." See Appendix 2, rule 20 2.20 -.22. The same negative result would occur if the petitioner was limited to sedentary work.

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 1st day of February, 2013

\sNancy J. Gagnon
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 1, 2013.

Trempealeau County Department of Soc Services
Disability Determination Bureau
CLindenberg@cardonoutreach.com