



STATE OF WISCONSIN  
Division of Hearings and Appeals

---

In the Matter of



DECISION

MDD/146743

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 14, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on February 12, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

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 Kenosha County.
2. The Petitioner filed a claim for disability on October 14, 2011 alleging disability due to mental and physical illness. A second claim was filed on July 20, 2012. The Petitioner alleges he has been unable to work as of August 26, 2008. The Petitioner reported changes in his condition on December 10, 2011, including increased pain, elbow pain and hernia surgery.
3. On November 1, 2012, the agency denied the Petitioner's disability application. On December 14, 2012, a reconsideration request was filed.

4. Petitioner is 50 years old. He has a high school GED. Petitioner's primary diagnosis is chronic pain, particularly in his joints, back, shoulders and knees.
5. Petitioner's mental health diagnoses include OCD, depressive disorder and anxiety disorder. He has a history of alcohol abuse and pyromania.
6. A Psychiatric Review was completed by Jack Spear, Ph.D. on January 8, 2013. Dr. Spear concluded that Petitioner's mental impairments include anxiety disorder, adjustment disorder with mixed anxiety and depressed mood, and a history of alcohol abuse. He found the impairments are not severe or disabling. He noted that the Petitioner alleges physical problems as the primary reasons he cannot work. He noted some moderate limitation in maintaining concentration, persistence or pace and mild limitation in maintaining social functioning. He concluded that the Petitioner should be capable of unskilled work.
7. A Physical Residual Functional Capacity Assessment was completed by Mina Khorshidi, M.D. on January 9, 2013. She noted the following limitations of the Petitioner:
  - Occasional lifting and/or carrying: 20 lbs maximum
  - Frequent lifting and/or carrying: 10 lbs maximum
  - Standing and/or walking (with normal breaks): 6 hours in an 8 hour workday
  - Sitting (with normal breaks): 6 hours in an 8 hour workday
  - Pushing and/or pulling: unlimited

She further found postural limitations including occasional climbing (stairs, ladders), frequent balancing and stooping, occasional kneeling and crouching, frequent crawling limitation. She noted that a March, 2012 lumbar x-ray was negative. She also noted Petitioner's R knee has mild-moderate degenerative joint disease. She considered a November 27, 2012 physical exam which showed full range of motion. She further considered that the Petitioner has a history of rotator cuff injury to the right shoulder in 1993. She noted a December 7, 2012 hernia repair. She concluded that the Petitioner's report of difficulties in sitting, standing and walking are greater than what the objective findings indicate. She concluded Petitioner is able to do light work with occasional climbing, kneeling, or crouching.

### 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 his medical condition, and his 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 physical 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 Petitioner's impairment does not meet or equal a listed impairment.

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 types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that there is no past work to consider.

The DDB found that physically Petitioner is capable of doing light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. The DDB cited Rule 202.20, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.20 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The Petitioner testified at the hearing that he cannot reach overhead due to his shoulder injury. He indicated that his back is in constant pain. He testified that he can walk 1 – 2 blocks and then must stop for 5 – 10 minutes before continuing. He stated that he can sit upright for 5 minutes. Bending and stooping are difficult for him. He stated he can lift a little less than 10 pounds frequently. He is able to do most of his personal cares though it is difficult to shave at times and he cannot always reach around his back to wash. He testified that his hands have circulation problems and ache. He is able to cook occasionally but cleaning is difficult.

The Petitioner's pain complaints have remained consistent through the evaluations and assessments. The agency found that the Petitioner's condition is likely to cause some pain but the objective findings of the assessments did not support the extent of limitation asserted by the Petitioner.

Based on the objective evidence produced by the agency and the regulations, I conclude that the agency properly found the Petitioner is not disabled.

### **CONCLUSIONS OF LAW**

The agency properly found 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 14th day of March, 2013

---

\sDebra Bursinger  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 14, 2013.

Kenosha County Human Service Department  
Disability Determination Bureau