



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

In the Matter of

[REDACTED]

DECISION

MDD/146825

PRELIMINARY RECITALS

Pursuant to a petition filed December 10, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a hearing was held on February 21, 2013, at Green Bay, Wisconsin. The record was held open post-hearing to allow petitioner to submit additional documentation; said documentation was timely received.

The issue for determination is whether petitioner is disabled.

There appeared at that time and place 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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.
2. The petitioner is a six-year-old boy diagnosed with autism and autism spectrum disorders; a diagnosis of Asperger's Disorder is noted to be at a mild to moderate level . Exhibit 6.

3. The petitioner displays physically and verbally aggressive behaviors at home, school, and in public. The physically aggressive behaviors occur more consistently in the home, and he has hit his sister with his fists. The petitioner engages in tantrums on a daily basis during which he screams and growls at others. Exhibit 1. The petitioner has responded favorably to medication, and he has shown “significant” gains in self-control, self-regulation and using his words to gain attention appropriately. Exhibit 7 and Exhibit 2.
4. The petitioner receives therapy, including speech therapy, through school, in accordance with an Individualized Education Program (IEP). Exhibit 2.
5. Petitioner’s parents sought to have petitioner and his sister included on the state waitlist for Intensive In-Home autism Therapy, and therefore sought the instant disability determination. Petitioner and his sister individually completed a Children’s Long Term functional screen, and were both deemed eligible for funding for services. Subsequently, petitioner’s sister was found disabled, while petitioner was not found disabled. Exhibit 8.
6. The petitioner has few, if any, cognitive delays, however his medical records indicate that he has more difficulty responding to questions in unstructured situations.
7. The petitioner has obvious problems in areas of interacting and relating with others. In particular, he has problems with impulse control in group social settings, keeping a safe space, using safe hands and friendly words. He “has made significant gains in using friendly words during structured situations, so that other children no longer avoid him. ” Exhibit 2.
8. The petitioner’s impairment is severe.

DISCUSSION

Current standards for childhood disability were enacted following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A disabling impairment for children is defined as follows:

If you are a child, a disabling impairment is an impairment (or combination of impairments) that causes marked and severe functional limitations. This means that the impairment or combination of impairments:

- (1) Must meet or medically or functionally equal the requirements of a listing in the Listing of Impairments in appendix 1 of Subpart P of part 404 of this chapter, or
- (2) Would result in a finding that you are disabled under § 416.994a.

20 C.F.R. § 416.911(b). The reference in § 416.994a subsection (2) describes disability reviews for children found disabled under the prior law. Since the petitioner’s disability began after the new law was passed, he must meet or equal a listing described in subsection (1).

The process for determining whether an individual meets this definition is sequential. *See* 20 C.F.R. § 416.924. First, if he is doing “substantial gainful activity,” he is not disabled and the evaluation stops. The petitioner is not working, so he passes this step.

Second, physical and mental impairments are considered to determine whether the claimant has an impairment or combination of impairments considered severe. If the impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal functional limitations, it will not be found to be severe. 20 C.F.R. § 416.924(c). The respondent has conceded that petitioner’s disability is severe, but further concludes that the impairment does not meet, medically equal, or functionally equal the listings.

An applicant functionally equals a listed disability if he proves that he has an extreme limitation in one broad area of functioning or marked limitations in two broad areas of functioning. 20 C.F.R. § 416.925. An extreme limitation interferes very seriously with the child's ability to "independently initiate, sustain, or complete activities." It does not necessarily mean a total lack or loss of ability to function. *See* 20 C.F.R. § 416.926a(e)(3). A marked limitation "interferes seriously with [the] ability to independently initiate, sustain, or complete activities." 20 C.F.R. § 416.926a(e)(2). SSI rules require review of the following six domains when determining whether the petitioner has limitations: (1) Acquiring and using information, (2) Attending and completing tasks, (3) Interacting and relating with others, (4) Moving about and manipulating objects, (5) Caring for yourself, and (6) Health and physical well-being. 20 C.F.R. § 416.926a(b)(1).

The petitioner has been diagnosed with autism and Asperger's Disorder, and has a history of temper tantrums. His Early Childhood Special Education teacher reports that at school he sometimes engages in "policing" the activities of his peers, though she notes a significant reduction in this behavior. Exhibit 7. Likewise, she has noticed a decrease in petitioner's arguments with his peers from 3 or 4 times each day, to an average of once each day.

Physically he is healthy and has no severe gross motor skill problems.

[Petitioner] is an eager learner, who takes pride in his skill accomplishments. He is respectful of all of his teachers and responds positively to their redirections. He enthusiastically joins in the sensory routines at the start of Kindergarten ... [Petitioner] has a strong vocabulary and competently joins in classroom conversations. [Petitioner] demonstrates average skills in both literacy and math.

Exhibit 7.

Taken as a whole, the evidence before me demonstrates that the petitioner has deficits in the area of relating to others. However, based upon the medical records as well as petitioner's positive response to (and demonstrated progress resulting from) therapy and medication, I do not find that these difficulties amount to a childhood disability.¹ In the areas of acquiring and using information, attending and completing tasks, moving about and manipulating objects, caring for himself, and his health and well-being, I concur with the respondent's findings that the records demonstrate less than marked limitations, if any. Because he does not have extreme limitations across one, or marked limitations across two, broad areas of functioning, I must find that he is not disabled and uphold the agency's decision.

CONCLUSIONS OF LAW

The petitioner is not disabled.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

¹ Petitioner's mother noted that petitioner's sister has also been diagnosed with an autism spectrum disorder. Unlike her brother, she was found disabled as a result. Post-hearing, correspondence was received from a social worker with Brown County who confirmed that both children were screened and found eligible for funding through the Children's Long Term Support waiver. Exhibit 8. I am unable to view Exhibit 8 as evidence in favor of finding that the petitioner is disabled. Specifically, while I understand that the children have received similar diagnoses, I do not know any of the specifics of petitioner's sister's diagnosis, and can draw no conclusions as a result.

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 March, 2013

\sPeter McCombs
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 March 19, 2013.

Brown County Human Services
Disability Determination Bureau