FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted]
[redacted]
[redacted]

DECISION

MDD/147341

PRELIMINARY RECITALS

Pursuant to a petition filed January 22, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on April 1, 2013, by telephone. At the petitioner's request, the hearing record was held open through June 17, 2013, for additional 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]
By: [redacted]
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street
[redacted], 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 Dane County.

2. The petitioner applied for MA/MAPP in September 2012. The Disability Determination Bureau reviewed his application and determined that he was not eligible, due to lack of disability, on September 19, 2012 That caused the county agency to deny his application by notice dated September 26, 2012. The petitioner again applied for MA or MAPP on February 7, 2012. The

Bureau re-issued the letter dated September 19, 2012, in which the Bureau found that petitioner was not disabled. It apparently treated the new request as a reconsideration request, and the Bureau affirmed its determination on February 7, 2013.

3. Prior to or concurrently with the MA application, petitioner also applied for Social Security disability benefits and Supplemental Security Income (SSI). Those benefits were denied on January 16, 2013, due to the petitioner's receipt of income above the substantial gainful activity level. The Social Security Administration did not evaluate whether the petitioner met a disability listing in reaching its decision. *See*, Exhibit 4, SSA letter.

4. The petitioner is currently employed in a very supportive work setting, and makes income that is slightly above the "substantial gainful activity" level.

5. The petitioner suffers from mental retardation, kyphosis, and valvular heart disease. He was hit by a vehicle as a child, and therefore walks with a limp. He had an aortic valve replacement and VSD repair done in 1994. He has a Grade 1 diastolic dysfunction, but is otherwise enjoying adequate function of the valve. Blood pressure is within normal limits, there is no peripheral edema, and he has no current complaints of dizziness, chest pain or shortness of breath. He is seen for post-surgical follow-ups once yearly.

6. The petitioner has a full scale IQ of 71. He has had no "episodes of decompensation") (*e.g.*, psychiatric hospitalization). The petitioner was assessed by Dr. [redacted] in June 2013. That assessment of his domestic skills and domain of Daily Living Skills on the Vineland-II yielded scores in the "Deficient" range. *See*, Exhibit 5.

7. The petitioner has marked restrictions in his ability to perform his "activities of daily living" (*e.g.*, eating, dressing, toileting, showering). He has mild difficulties in maintaining social functioning, and a marked limitation in maintaining concentration/persistence/pace.

9. The petitioner's past relevant employment was as a dishwasher, bussing tables, and sports [redacted] equipment manager. More specifically, he does the laundry for the [redacted]. In these jobs, he frequently lifted heavy objects.

10. The petitioner's impairments, in total, constitute a "severe" impairment. DDB asserts that the petitioner retains the residual functional capacity to perform medium work.

11. The petitioner, age 57, completed the twelfth grade, although many courses were through special education. His previous employment was in unskilled occupations, with non-transferable skills.

DISCUSSION

The Medicaid Purchase Plan (MAPP) is a subprogram of the Wisconsin Medicaid Program. It allows disabled adults who are working or want to work to become or remain Medicaid eligible, even if employed, since there are higher income limits. *MA Eligibility Handbook (MEH)*, §26.1, online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm .

The standards used for determining disability are set forth at 20 C.F.R.s.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.s.416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." He is currently employed. Therefore, he does not pass the first test in the sequential evaluation for "regular MA;" however, he remains potentially eligible for the Medicaid Purchase Plan (MAPP). 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 N31) 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 1. I have reviewed the listing standards that might apply to the petitioner's ailment, and conclude that his ailment does not meet a listed standard. Specifically, I conclude the petitioner's status does not meet the listing for mental retardation:

> **12.05** ***Mental retardation****:* Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.
>
> The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.
>
> A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;
>
> OR
>
> B. A valid verbal, performance, or full scale IQ of 59 or less;
>
> OR
>
> C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;
>
> OR
>
> D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:
>
> 1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

Section 12.05 in 20 C.F.R. Appendix 1 to Subpart P (immediately after § 404.1599), "Listing of Impairments". He cannot meet the listing standard at §12.05D because his IQ is one point too high – 71 versus the 70 ceiling.

However, I find that the petitioner's condition is equivalent to the mental retardation listing. First, he only missed the listing standard by one point on a standardized test. In the Bureau's red file, I noted this observation from a reviewer:

> His full scale IQ of 71 is just at the cusp between a borderline intellectual functioning and mid mental retardation. Per examiner, *he actually scored higher than expected based on his history and his presentation.*
>
> [*emphasis added*]

Exhibit 1, DDB file.

The petitioner has marked restrictions in his ability to perform ADLs and in his concentration/persistence/pace for work activity. He enjoys an informal support network of about 10 people who assure that he eats adequately, gets exercise, help him with work duties, and give him rides. He is physically capable of dressing and grooming himself, but does so through rigid routines without a cause-and-effect understanding of cleanliness or appropriateness. He does not cook, other than to warm up items in a microwave. Relatives perform his grocery shopping and apartment housekeeping. Due to physical coordination problems, sweeping and mopping are difficult for him. Significantly, when interviewed by clinical psychologist [redacted] in June 2013, the petitioner stated he was very good at cleaning and did not usually need help. This is grossly incorrect, and suggests that the petitioner has created a false impression of his abilities in other assessment interviews. [redacted]'s assessment of his domestic skills and domain of Daily Living Skills on the Vineland-II yielded scores in the "Deficient" range.

The petitioner also has marked restrictions in his persistence, concentration and pace of work. He is able to retain his employment due to a high level of support and direction at his work sites. He is able to walk to his school year employment at [redacted] because he lives across the street from the site. The petitioner's supervisors allocated extended time for task completion because he works slowly and becomes unfocused. His work supervisor at [redacted] testified that she makes many accommodations for the petitioner, including giving all instructions to him verbally (never in writing), allowing him to have extra "sit-down" breaks, giving only one-step directions, and having another employee make his time card entries. Per the testimony of the supervisor and the [redacted] Disability Resource Specialist, [redacted], the work environment that has been created for the petitioner at [redacted] is similar to that in a sheltered workshop.

The petitioner has terrible judgment regarding money, and his sister handles finances of consequence. His Math Problem Solving skills on the WIAT-II were in the "Deficient" range, per [redacted]'s testing. His overall communication skills on Vineland-II are also in the "Deficient" range. Finally, although the petitioner has an adequate short term memory for details, he cannot grasp higher order concepts and is illogical in his problem-solving skills.

Due to the petitioner's marked restrictions in two domains, I conclude that his disability is the functional equivalent of the mental retardation listing at § 12.05D.

CONCLUSIONS OF LAW

1. Petitioner *is* disabled as that term is used for MAPP purposes, pursuant to Wis. Stat. § 49.47(4).
2. The petitioner has been disabled since at least November 1, 2011 (3 months prior to the February application, the maximum retroactive period).

THEREFORE, it is **ORDERED**

That the petition for review is remanded to the county agency with instructions to continue the determination of the petitioner's MAPP eligibility, in accord with the Conclusions of Law above.

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 15th day of July, 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 July 15, 2013.

Dane County Department of Human Services
Disability Determination Bureau