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

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In the Matter of

██████ ██████  
██████████████████  
██████████████████████████████

DECISION

MDD/147458

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 26, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on March 13, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner is disabled for state medical assistance purposes.

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:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner has a primary diagnosis of Systemic Lupus Erythematosus. She has a secondary diagnosis of Hypothyroidism.
3. Petitioner has mobility limitations. She has difficulty on stairs.

4. She wakes up between 430am and 6am. She bathes herself. She makes her own bed. She is able to do light housework in her home. She runs errands. She gets in some walking exercise several times per week. She goes to church regularly. Petitioner does not like to sit for more than 4 hours at a time. It helps if she can get up and walk short distances periodically.
5. The petitioner applied for state medical assistance benefits based on disability on June 18, 2012.
6. The Disability Determination Bureau denied the request on November 12, 2012.
7. Petitioner requested reconsideration by the DDB.
8. The DDB affirmed this decision after reconsideration on February 14, 2013.

### **DISCUSSION**

To be eligible for MA, an adult female 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 her medical condition, and her 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, she is found to be not disabled without further review. If she is not working, the DDB must determine if she 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 she has a severe 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 fourth and fifth steps occur if the impairments do not meet the listings, which they do not in this case. 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 found that physically petitioner was 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. Rule 202.21 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The problem for petitioner is that even if she were limited to sedentary work, the lowest level, she still would be found not disabled. Sedentary work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a). A certain amount of walking and standing

can be involved in sedentary work. A person of petitioner's age and training who is able to do only sedentary work is not disabled. Rule 201.21. Based on the written record and the testimony at the hearing, petitioner can do at least sedentary work and possibly light level work. Petitioner conceded at hearing that she could work a part-time secretarial job as long as she could get up and stretch her legs periodically.

I also note that the DDB cited Rule 202.20, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. That rule indicates that a person with a high school education but no work history is to be determined not disabled. Petitioner's MA application indicates no work history. Petitioner made reference to past work during the hearing, however, but without any specificity. Without a record of work history, petitioner would also be found not disabled under this section.

### **CONCLUSIONS OF LAW**

Petitioner is not disabled for purposes of state medical assistance eligibility.

**THEREFORE, it is** **ORDERED**

That this appeal 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 April, 2013

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\sJohn P. Tedesco  
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 April 1, 2013.

Milwaukee Enrollment Services  
Disability Determination Bureau