



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/147542

PRELIMINARY RECITALS

Pursuant to a petition filed February 22, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA) or the MA subset - MAPP, 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 the petitioner is disabled for MAPP purposes.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED], sister
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
[REDACTED], Wisconsin 53703
By: Ryan Grimes, ES Spec.
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
[REDACTED], WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.

2. The petitioner applied for MA or 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 decision was transmitted to the county agency, causing the county agency to automatically deny the petitioner's application by notice dated September 26, 2012. The September 26, 2012 notice was sent to the petitioner at his sister's address. The instant appeal is not timely with respect to the September 2012 denial.
3. 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 treated the new request as a reconsideration request, and the Bureau affirmed its determination on February 7, 2013.
4. Prior to or concurrently with the MA/MAPP 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.
5. The petitioner is currently employed in a very supportive work setting, and makes income that is slightly above the "substantial gainful activity" level.
6. 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.
7. 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] [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.
8. The petitioner has marked restrictions in his ability to perform his "activities of daily living" (*e.g.*, eating, dressing, toileting, showering, housekeeping). 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 has done and currently does the laundry for the [REDACTED] [REDACTED] [REDACTED] [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. I incorporate by reference my complete disability analysis of the petitioner found in the companion case, MDD-147341. The result was that, due to the petitioner's marked restrictions in two domains, I concluded that his disability is the functional equivalent of the mental retardation listing at § 12.05D. (Due to the limitations in this office's database program, I must issue the decision in MDD-147341 under separate cover, as opposed to combining the two decisions into one document.)

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 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 12th 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 12, 2013.

Dane County Department of Human Services
Division of Health Care Access and Accountability