



FH

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

In the Matter of

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

DECISION

MDD/147561

PRELIMINARY RECITALS

Pursuant to a petition filed January 24, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Portage County Department of Human Services in regard to Medical Assistance, a hearing was held on March 18, 2013, at Stevens Point, Wisconsin.

The issue for determination is whether petitioner is disabled for MA-Disability purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

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 Portage County. He is a five year old boy.
2. Petitioner applied for medical assistance based on disability in July 2012.
3. The application was denied on 12/10/12.
4. Petitioner requested reconsideration on 1/24/13.

5. The denial was affirmed on 2/14/13.

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 agency determined that the Petitioner's impairment is severe so this step is met.

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 agency determined the Petitioner has no limitations in Domains 2, 4, and 6. The agency found a less than marked limitation in Domain 1 (acquiring and using information) based on language delays. The agency found a less than marked limitation is Domain 3 (interacting and relating with others) based on the parents reports and concerns about behavior, though behavior has not been a major issue at school or in clinical settings. Finally, the agency found a less than marked limitation in Domain 5 (caring for yourself) in that petitioner needs verbal prompts and is disorganized at times. The agency concludes that the parental concerns are reasonable but do not indicate a disabling condition.

After review of the record and careful consideration of the testimony at hearing, I do not find that the petitioner has established otherwise. Parental concerns and opinions do not amount to disability. So many of the "problems" reported by petitioner's mother seem typical of a child of the age of five. At hearing, petitioner's mother stressed her great concern over the fact that her son still wets the bed. No

expert testimony was presented, but my impression of this behavior is that it does not indicate a disabling condition in the case of a five year old boy. Petitioner's witness and provider also found such bedwetting to be far outside the norm. Petitioner's mother also related her observations about her son having a difficult time sharing and trouble taking turns. She explained that her son writes letters or words in a manner in which the letters do not track a straight line but instead go up and down. Her concern was based on her experience with her other children not having such behavior at this age. Petitioner's mother also stated her observation of her son's "gender confusion" when his teacher got a short haircut and he asked if she was a boy. She also relates concerns about petitioner artwork not being on the same level as his peers in school in that it "is often times incomplete." She also explains that petitioner, a five year old, "often times forgets to go to the bathroom. He often times forgets to wipe or wash his hands." If these behaviors reflect a disability, I am afraid I do not see it. But, given that it is the petitioner's burden to establish that he is disabled, he would need to provide me with documentation, expert testimony, learned treatises, or something of substance indicating that such a child is disabled under the law other than simply his mother's concerns that he is not like his siblings or other children in his class at school.

CONCLUSIONS OF LAW

Petitioner is not disabled for purposes of MA-Disability

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 16th day of May, 2013

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on May 16, 2013.

Portage County Department of Human Services
Disability Determination Bureau