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

In the Matter of

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

DECISION

MAP/147564

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on March 18, 2013, at Barron, Wisconsin.

The issue for determination is whether the petitioner is disabled.

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

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Barron County.
2. The petitioner applied for medical assistance under the Medicaid Purchase Plan on July 27, 2012. The Disability Determination Bureau most recently determined that she was not disabled on February 15, 2013.

3. The petitioner is 22 years old. She graduated from high school and has an associate degree in early childhood development.
4. The petitioner is diagnosed with Charcot-Marie-Tooth Disease, a progressive hereditary disease affecting the peripheral nerves. It leads to weakness, lack of coordination, and pain.
5. The petitioner currently works 20 hours a week and earns \$8 per hour at a [REDACTED]. She performs most of the same duties as the other workers but takes extra rest breaks and does not run.
6. The petitioner has had surgery approximately every other year since she was three years old.
7. The petitioner cannot run, does very little twisting, and requires a railing to walk on stairs.
8. The petitioner can lift less than 25 pounds. She can walk about two blocks before needing to rest. She swims regularly.
9. The petitioner drives a car, shops, cleans her house, irons, does laundry and takes out the garbage. She requires help bringing laundry up the stairs and lifting and moving things.

DISCUSSION

The Medicaid Purchase Plan allows those who are disabled but wish to work to receive medical assistance. Wis. Stat. § 49.472. Recipients pay a certain amount of their income toward Medicaid premiums. Before Wisconsin received an exemption from the federal government that allowed it to offer the Medicaid Purchase Plan, those engaged in substantial gainful employment were barred from receiving medical assistance as a result of a disability. Among the requirements to receive benefits under the Purchase Plan is the following: “The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.” Wis. Stat. § 49.472(3)(g). The petitioner works 20 hours a week and earns \$8 an hour at a [REDACTED], so she meets this criterion.

To qualify as disabled, she must meet the disability standard set by Supplemental Security Income (SSI) regulations. 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. She is disabled if she cannot engage in any substantial gainful activity because of a medically determinable physical or mental condition that will, or has, lasted at least twelve months. The Disability Determination Bureau determines if an applicant meets this definition by evaluating in sequence her 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. 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 will be found to be not disabled without further review. To be considered engaged in substantial gainful employment a person generally must make at least the following income:

- (ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:
 - (A) The amount for the previous year, or
 - (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998.

20 CFR §416.974 (b)(2).

Using this formula and rounding to the nearest \$10, the Social Security Administration set the 2013 wage limit at \$1040 per month. <http://www.ssa.gov/OACT/COLA/sga.html>. When the petitioner's \$160 weekly earnings are multiplied by 4.3, the number of weeks in an average month, her monthly income is \$688. Thus, although she has gainful employment, she does not have *substantial* gainful employment. This means that her eligibility can be determined in the same way as it is for any other person seeking medical assistance as a disabled person.

The next step is to 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. She is diagnosed Charcot-Marie-Tooth Disease, a progressive hereditary disease affecting the peripheral nerves, that leads to weakness, lack of coordination and pain. As a result, she cannot run, can only walk about two blocks without resting, does very little twisting, lifts less than 25 pounds, and requires a railing to walk on stairs. 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). Charcot-Marie-Tooth Disease is an degenerative disease not found elsewhere in the listings. To qualify as equal to a listed impairment, the petitioner must demonstrate disorganization of her motor function as described in § 11.04B of the listings. Appendix I, § 11.17. Section 11.04B requires "[s]ignificant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station." This in turn requires that she meet the following requirement in § 11.00C:

Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.

The petitioner has weakness in her extremities, but has not exhibited significant and persistent disorganization of her motor function. Although she cannot run and has trouble climbing stairs, she can walk, swim, take out the garbage, and do laundry. There are no reports of her frequently tripping and falling or dropping objects. Thus, while she clearly has a major physical problem that likely will get worse, she does not now meet the listing.

If the impairment does not meet one of the listings, the Bureau must next determine whether she can perform past jobs. 20 C.F.R. § 416.960. The petitioner is working but, as noted, is not doing so fulltime. Working with children as she does is fairly strenuous, and it does not appear that she could do this work fulltime. Nor does not appear that she has other jobs that she has performed that she could return to.

The petitioner is 22 years old, making her a younger individual under the rules. A younger individual who can do even sedentary work is not considered disabled. 20 C.F.R. Pt. 404, Subpt. P. App. 2, Rule 201.23. Sedentary work requires no more than occasionally lifting up to 10 pounds at a time and occasionally being able to walk and stand. Despite the petitioner's severe physical problems, her ability to walk at least 10 minutes, do laundry, and take out the garbage indicate that she can do this level of work. As a result, I must find that she is not disabled. In making this decision, I do not question that she has significant problems that require medical care. However, because the law holds that a finding of disability depends primarily upon a person's ability to work rather than upon her medical needs, I must uphold the Disability Determination Bureau's decision.

CONCLUSIONS OF LAW

The petitioner is not disabled because she is a younger individual who can do at least sedentary work.

THEREFORE, it is

ORDERED

The petitioner's 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 5th day of April, 2013

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on April 5, 2013.

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