



FH

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

---

In the Matter of

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

DECISION

MDD/148233

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed June 11, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Shawano County Department of Social Services in regard to Medical Assistance, a hearing was held on April 23, 2013, at Shawano, Wisconsin.

At the time of the hearing, petitioner indicated that he wished to be represented by Ms. ██████ ██████ and did not wish to appear himself or make any statements or arguments. The telephone call was concluded and petitioner did not appear further.

The issue for determination is whether petitioner is disabled for purposes of state medical assistance based on disability.

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 48 year old resident of Shawano County. Petitioner has a history of farm work and construction and logging.

2. Petitioner applied for state medical assistance based on a disability on December 22, 2011.
3. On May 24, 2012, the Disability Determination Bureau sent notice to petitioner informing him that is found him not disabled on the basis that any impairments from which petitioner suffers are not severe.
4. Petitioner requested reconsideration on June 11, 2012. The DDB subsequently affirmed the denial.

### DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines “disability” as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner’s current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual’s basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual’s testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

### **THE FIVE-STEP DISABILITY DETERMINATION PROCESS**

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but earning less than \$860 per month, proceed to Step 2. 20 C.F.R. § 416.920(b).
2. An individual who does not have a “severe impairment” which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Step 3. 20 C.F.R. § 416.920(c).
3. If the individual’s severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual’s severe impairment does not meet or equal a listing, proceed to Step 4. 20 C.F.R. § 416.920(d).

4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Step 5. 20 C.F.R. § 416.920(e).

(Note, if the individual has marginal education (less than 7<sup>th</sup> grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2).

5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

### **PROCESSING OF PETITIONER'S DISABILITY APPLICATION**

For Step 1, petitioner is not working and meets this step.

For Step 2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the Bureau applies the following test:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, the DDB determined that the petitioner’s impairments are not severe.

Ms. [REDACTED] repeatedly stated her opinion that petitioner is unable to work. But, she did not explain any reasons for this beyond what is found in the medical record. It is clear that petitioner has a history of back issues and surgeries and heart issues and heart surgeries. But, she also confirmed that petitioner can walk slowly and can mow his lawn. She also confirmed that he lives alone in a single-family home and can accomplish his activities of daily living. He can negotiate the few steps leading into his home. She stated that she does his laundry for petitioner. This, however, appeared to be more due to the “routine” described by Ms. [REDACTED] as she also explained that petitioner has gone to the basement in the past to do his own laundry at times. Petitioner prepares his own food and dresses and bathes himself. Ms. [REDACTED] disputes that petitioner can lift less than ten pound frequently explaining that he can lift a gallon of milk but no more.

She also stated that petitioner suffers from confusion. Ms. [REDACTED] testified the petitioner can drive a car and has access to a car belonging to Ms. [REDACTED]. Ms. [REDACTED] explained that she and her husband are, in reality, supporting petitioner. Petitioner can go grocery shopping by himself if for a short time, but more often goes with another person.

Ms. [REDACTED] did not present any information that causes me to find error in the DDB determination. The vast majority of what she stated was consistent with the facts considered by the DDB. Ms. [REDACTED] disagreed with some facts found by the DDB, such as in the area of physical limitations (lifting). But, she did not offer any clinical evidence to contradict the finding by the DDB.

Based on this record, I do not find a severe impairment, that “significantly” limits petitioner’s ability to be basic work activities. I fully understand that he cannot do the work he has done in the past, and that jobs that he may be able to do may not be plentiful in Shawano County. But, that are not the pertinent inquiries in a case like this. Petitioner may re-apply for MA-Disability if he can present clinical evidence of a change in his condition.

**CONCLUSIONS OF LAW**

Petitioner is not disabled.

**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 7th day of May, 2013

---

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



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 7, 2013.

Shawano County Department of Social Services  
Disability Determination Bureau