



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MAP/149302

PRELIMINARY RECITALS

Pursuant to a petition filed February 20, 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 June 26, 2013, at Balsam Lake, 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 Polk County.
2. The petitioner applied medical assistance through the Medicaid Purchase Plan on July 23, 2012.
3. The petitioner has not worked since about 2000.

4. The Disability Determination Bureau most recently determined that the petitioner was not disabled on May 8, 2013.
5. The petitioner is 52 years old. He can read and write the English language but did not graduate from high school or obtain a GED.
6. The petitioner had a heart attack on July 5, 2013.
7. The petitioner's ejection fraction has improved from about 40% a year ago to 55% earlier this year. He does not have severe angina.
8. The petitioner has normal strength in his legs but some give-away weakness in his arms. Overall, his arm strength is rated as good. He has normal strength in his hands.
9. The petitioner has normal fine and gross motor movements. Testing indicates that he has normal sensation in his hands.
10. The petitioner has spondylosis and degenerative changes in his neck and spondylosis in his lumbar spine. He has fair range of motion in his back and good range of motion in his neck.
11. The petitioner can walk about one-half mile.
12. The petitioner can lift 20 pounds occasionally and 10 pounds frequently.
13. The petitioner hunts and fishes. He was able to dress out a deer but had assistance loading it into his vehicle.

DISCUSSION

The Medicaid Purchase Plan allows those who are disabled but wish to work to receive medical assistance. Wis. Stat. § 49.472. Recipients must be "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 is not working. Rather than dismissing his claim on that ground, I will determine it in the same way as any other medical assistance disability claim is determined.

To be found disabled he must meet the Supplemental Security Income (SSI) definition of disability. 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. He is disabled if he 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. To determine if he meets this definition, the following are evaluated in sequence: his current employment status, the severity of his medical condition, and his 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 petitioner is working at a job that is considered to be substantial gainful employment, he will be found to be not disabled without further review. If he is not working, the Bureau must determine if he has a "severe impairment." A severe impairment is one that limits his ability to do basic work activities. 20 C.F.R. § 416.921. The Bureau found that he is not working and that he 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 considered disabling without additional review. 20 C.F.R. § 416.925(a). The petitioner had a heart attack last year. His ejection fraction, which represents the percentage of the blood pumped out of the ventricle with each contraction, was measured at around 40% last year and at 55% earlier this year. To qualify as disabled, the ejection fraction must not exceed

30%. Appendix I, § 4.02A1. Thus he does not meet this listing. He also has some degenerative changes in his neck and lumbar spine region, but he still has fair or good movement in those regions.

The fourth and fifth steps occur if the impairment does not meet the listings. The Bureau must determine whether he can perform past jobs. If not, it must determine if he can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. The Bureau found that he cannot perform past jobs but that he could do other gainful activity. He is 52 years old, which is considered to be approaching advanced age. 20 CFR § 416.963(d). A person approaching advanced age who can speak English is not considered disabled if he can do light work. *See* 20 CFR Pt. 404, Subpt. P, App. 2, Rule 202.10. Light work is work that requires him to lift at least 20 pounds occasionally and 10 pounds frequently. 20 C.F.R. § 404.1567(b). The petitioner has some reduced range of motion and reduced strength. But he can walk a half mile, hunt, and fish. His file indicates that he can lift 10 pounds frequently and 20 pounds occasionally. There is no doubt that he has significant physical problems, which is why the Disability Determination Bureau determined that he has a severe impairment. Nevertheless, this impairment does not meet the level required to find him disabled. Therefore, his is not entitled to medical assistance based upon a disability.

CONCLUSIONS OF LAW

The petitioner is not disabled.

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 8th day of July, 2013

\sMichael D. O'Brien
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 8, 2013.

Polk County Department of Social Services
Division of Health Care Access and Accountability