



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MST/149526

PRELIMINARY RECITALS

Pursuant to a petition filed March 4, 2013, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for State Supplemental Security Income (SSI) and Medical Assistance (MA) purposes, a hearing was held on May 30, 2013, by telephone.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is an 18-year-old resident of Manitowoc County.
2. Petitioner has received State SSI and MA since she was an infant. Her federal SSI ended due to family income, and in recent years only State SSI was provided.
3. The DDB reviewed petitioner's disability status beginning in March, 2013. It reviewed her disability under adult rules because she turned 18 and would graduate from high school in May.
4. Petitioner was born with a cleft palate, which was the basis of the disability determination when she was an infant. The cleft palate has been repaired and petitioner now functions as a normal 18-year-old albeit with some medical complications. She is subject to ear infections which lead to migraine headaches. She has hearing loss but not to a degree that it is disabling. She has TMJ,

and it is anticipated that further surgery is necessary to align her jaw. She also needs further work on her nose as one side is blocked.

- 5. Petitioner graduated from high school with a 3.7 grade point. She is employed 15-20 hours per week doing labor type work at [REDACTED]. She is able to handle the work physically although she misses work 1-4 times per month due to her ear and migraine problems.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its State Supplemental SSI payments separately from federal SSI payments (they had previously been sent out as one check by the Social Security Administration). The statute reads as follows:

49.77 State supplemental payments.

...

(2) ELIGIBILITY. (a) The following persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal supplemental security income program under 42 USC 1381 to 1383d are entitled to receive supplemental payments under this section:

...

2. Any needy person or couple residing in this state and receiving benefits under federal Title XVI.

3. Any needy person or couple residing in this state whose income, after deducting income excludable under federal Title XVI, is less than the combined benefit level available under federal Title XVI and this section, if at least one of the following requirements are met:

a. The person or couple was eligible for a state supplement under this section based on the last federal eligibility determination prior to January 1, 1996, but was not eligible to receive a payment under federal Title XVI on that date.

4. Any essential person.

Wis. Stat. §49.77(2).

Petitioner was eligible for the state SSI under subdivision (2)(a)3 of the statute. When the State of Wisconsin took over the state SSI program, petitioner received only state SSI because his income from social security put him over the federal SSI limit. As an SSI recipient, petitioner also received MA. Wis. Stat., §49.46(1)(a).

To continue to receive the state SSI, petitioner must continue to meet the nonfinancial requirements for federal SSI including being disabled as defined under 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. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's 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 are evaluated in that sequence. 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 is found to be not disabled without further review. If she is not working, the DDB must 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. The DDB found that petitioner does not have a severe impairment.

I must agree with that determination. Petitioner is able to do basic work activities, and in fact has been doing them in her part-time job while attending high school. Furthermore, despite her physical problems petitioner graduated from high school on time with an exceptional grade point. She participated in school activities including the track and field team. Having to miss work occasionally due to ear infections and headaches is not sufficient reason to conclude that she cannot do basic work activities.

As I pointed out during the hearing, petitioner should remain eligible for MA under the BadgerCare Plus (BC+) program until she turns 19 next February. Petitioner's mother should report the change to her county worker so that petitioner can be added to the BC+ household. In addition the provisions of the Affordable Health Care Act will become effective on January 1, 2014, and petitioner might be able to obtain health insurance at that time because pre-existing conditions are handled differently under that program.

CONCLUSIONS OF LAW

Petitioner cannot be considered to be disabled under adult disability rules because she is capable of basic work activities despite her medical conditions, and thus the State correctly discontinued petitioner's Sate SSI and MA.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby 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

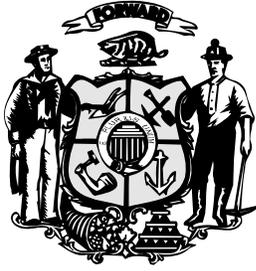
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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 31st day of May, 2013

\sBrian C. Schneider
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 May 31, 2013.

Manitowoc County Department of Human Services
Disability Determination Bureau