



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/149928

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 28, 2012, under Wis. Stat., § 49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on July 11, 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 a 62-year-old resident of Dane County.
2. Petitioner applied for MA on May 17, 2012. By a letter dated November 15, 2012, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration but the DDB again denied disability on June 4, 2013.
3. Petitioner's primary impairment is lung disease. She has limited lung capacity and has to rest after even the slightest activity. She also has degenerative disk disease in her back, arthritis, chronic diarrhea, and headaches.

4. Petitioner has a high school education. Her most recent employment was as a salesperson at [REDACTED] [REDACTED]. She left the job after being hospitalized with pneumonia. Other work history was in labor and on-line sales.
5. The DDB concluded that petitioner was capable of doing sales work like she did at [REDACTED] [REDACTED]. It found that she could use her extremities fully and that she could function with rest periods.

### DISCUSSION

To be eligible for MA, an adult female under age 65 must be disabled, blind, pregnant, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. 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 is not working and that 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). The DDB found that petitioner meets or equals no listing. I agree. The listings for respiratory impairments at 4.00 require specific test results that were not found in petitioner's case. Petitioner's other impairments also do not rise to listing standards.

The fourth and fifth steps occur if the impairments do not meet the listings. The DDB must determine whether the person is able to perform past jobs. If not, then the agency must determine if the person can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB found that petitioner could perform past work as a salesperson. This finding is important because petitioner has the burden of proving the finding to be wrong.

Petitioner testified that she cannot do sales work anymore. However, the record includes a residual functional capacity assessment done by a DDB doctor who concludes that petitioner is capable of doing light work such as sales despite her respiratory impairments. The conclusion is based on recent testing by University of Wisconsin doctors. There is no medical or professional evidence to rebut that finding.

I can see that the DDB reviewers believed that this was an extremely close case. I can see why a 62-year-old woman with these medical conditions would not want to attempt to work because it would take a strong initiative to do so. However, the professional evidence in the record supports the DDB conclusion, and there is no professional evidence to rebut the conclusion. I thus must affirm the DDB determination that petitioner is not disabled for MA purposes.

**CONCLUSIONS OF LAW**

The DDB correctly determined that petitioner is not disabled for MA purposes.

**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 18th day of July, 2013

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\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 July 18, 2013.

Dane County Department of Human Services  
Disability Determination Bureau