



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/149939

PRELIMINARY RECITALS

Pursuant to a petition filed May 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on August 20, 2013, at Eau Claire, 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:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.
2. The Disability Determination Bureau most recently denied the petitioner's application for medical assistance on May 30, 2013, with a finding that he is not disabled.
3. The petitioner is 29 years old.
4. The petitioner works 40 hours per week and earns \$10 per hour.

DISCUSSION

As an adult male under 65 with no minor children, the petitioner can receive medical assistance only if he is disabled. Wis. Stat. §§49.46(1) and 49.47(4). To be found disabled a person 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. A person 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 this definition is met, the following are evaluated in sequence: the applicant's 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 first step is to determine whether the petitioner is engaged in substantial gainful employment. To be considered engaged in substantial gainful employment he 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).

The Social Security Administration set the 2013 wage limit at \$1,040 per month. <http://www.ssa.gov/OACT/COLA/sga.html>. The petitioner works approximately 40 hours per week and earns \$10 per hour. The average month has 4.3 weeks, which is derived by dividing the 52 weeks in a year by the 12 months. Multiplying the 40 hours he works by the \$10 he makes per hour and then multiplying that amount by the 4.3 weeks in a month gives \$1,720 per month. Because this more than what is considered substantial gainful employment, I must find that he is not disabled. (I note that even if it is assumed there are four rather than 4.3 weeks in a month, his income would be \$1,600, or \$540 more than the SSI limit for gainful activity.)

I am aware that the petitioner has significant medical problems that require care. Unfortunately, because medical assistance uses SSI rules to determine whether one is disabled, being found disabled depends upon whether one can work rather than upon whether one needs medical care. I have no authority to ignore those rules. I note that the Medicaid Purchase Plan provides medical assistance to disabled persons who continue to work. However, the appeal I received was not an appeal of that program. Nothing prevents the petitioner from filing a new application specifically for that program. By pointing out that he may apply for that program, I do not indicate one way or another whether he actually qualifies for it. That would be determined at a future hearing in which evidence would be taken specifically for the purpose of making that determination.

CONCLUSIONS OF LAW

The petitioner is not entitled to medical assistance as a disabled person because he is gainfully employed.

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 26th day of August, 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 August 26, 2013.

Eau Claire County Department of Human Services
Disability Determination Bureau