



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/150103

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lincoln County Department of Social Services in regard to Medical Assistance, a telephone hearing was held on July 29, 2013.

The issue for determination is whether the petitioner is disabled for MA eligibility purposes.

There appeared at that time and place the following persons:

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:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Lincoln County.
2. Petitioner has completed her high school degree and also received an associate's degree in early childhood education.
3. Petitioner has never been employed, but is presently seeking employment.

4. Petitioner applied for MA disability benefits on or about October 1, 2012, due to medical complaints of problems with hearing loss and ear pain. The hearing record establishes that petitioner has sensorineural hearing loss, eustachian tube dysfunction and chronic ear infections.
5. The respondent sent a March 25, 2013, notice to the petitioner stating that she was determined not disabled because her conditions were not severe enough to prevent her from working. Petitioner sought reconsideration, but respondent affirmed its denial decision on June 18, 2013.
6. The petitioner is able to basically perform all her activities of daily living (ADLs).
7. The petitioner has not offered sufficient reliable medical evidence to establish that she meets any of the Listings of Impairments.
8. Respondent determined that as of June 17, 2013, petitioner's medical records and application did not establish that petitioner's hearing loss is a severe impairment..

DISCUSSION

To be eligible for MA, an adult 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 his/her medical condition, and his/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 RESPONDENT 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. 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). The RESPONDENT found that petitioner was not working, but that she does not have a severe impairment. I agree. While petitioner clearly has medical problems, they do not constitute a severe impairment of petitioner's ability to do basic work activities.

As such, the disability analysis ends here.¹ I note that the respondent reviewed petitioner's medical reports and surgical history. The respondent reviewer found that petitioner had no exertional, postural, manipulative, visual or environmental limitations. At hearing petitioner conceded that her hearing issues do not affect her activities of daily living. Petitioner did testify that her hearing has declined, but that she does not presently use hearing aids. She has had hearing problems and pain since birth.

¹ 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 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.

Based on the record before me, I conclude that petitioner does have medical problems, but they are not so severe as to prevent her from being employed in at least a sedentary, low-skill, job. Accordingly, based upon the above, I conclude that the Disability Determination Bureau correctly determined that petitioner is not disabled at this time for MA eligibility purposes.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for purposes of MA eligibility.

THEREFORE, it is ORDERED

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 6th day of September, 2013

\sPeter McCombs
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 September 6, 2013.

Lincoln County Department of Social Services
Disability Determination Bureau