



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/150110

PRELIMINARY RECITALS

Pursuant to a petition filed June 07, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on July 29, 2013, at Madison, Wisconsin.

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:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 53 year old resident of Dane County who resides in the community.
2. The petitioner worked housekeeping, bakery delivery, security, and packaging. His last regular, full time employment was during 2006 at a bakery. However, even during 2012, he performed a small amount of part-time employment at [REDACTED].
3. Petitioner applied for MA disability benefits on or about September 5, 2012, due to medical complaints of stress, mild depression, learning problems, and limited IQ. The petitioner does

- have some limitations in reading and writing, but for many years held full-time substantial gainful employment. He is moderately limited in regard to stress, but retains the ability to perform low stress, unskilled work.
4. The Disability Determination Bureau (DDB) sent a December 23, 2011 notice to the petitioner stating that he was determined not disabled because his conditions were not severe enough to prevent him from working at an unskilled job. Petitioner sought reconsideration, but DDB affirmed its denial decision.
 5. Petitioner has completed high school degree and also received two semesters of community college.
 6. The petitioner is generally able to basically perform all his activities of daily living (ADLs).
 7. The petitioner has not offered sufficient reliable medical evidence to establish that he meets any of the Listings of Impairments.
 8. The petitioner has not established that he is unable to perform low stress, unskilled employment.
 9. The petitioner has not established any substantial physical limitations.
 10. DDB determined that as of June, 2013, petitioner has had a residual functional capacity (RFC) for unskilled work.

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 (SGA) 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, he is found to be not disabled without further review. If he 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 was not working, and 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's medical conditions do not meet or equal any listing. I agree. While petitioner clearly has some medical problems, they are not at the level to meet the listings.

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 determined that petitioner could perform other than past work. DDB also determined that petitioner could perform low stress, unskilled work as of June, 2013.

The DDB reviewed petitioner's medical and physical functional capacity reports. The DDB reviewer found that petitioner has low but adequate attention, concentration, and interpersonal skills for unskilled, low stress employment. During the hearing, petitioner explained that he does have some stress-related problems and some problems with ability to concentrate and learning. Petitioner does have medical problems, but they are not so severe as to prevent him from participating in a low-stress, unskilled 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 12th day of August, 2013

\sGary M. Wolkstein
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 12, 2013.

Dane County Department of Human Services
Disability Determination Bureau