FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

MDD/150435

PRELIMINARY RECITALS

Pursuant to a petition filed May 17, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services and the Wisconsin Disability Determination Bureau (Bureau or DDB) in regard to Medical Assistance (MA), a hearing was held on July 31, 2013, by telephone.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

With: [redacted]
Disability Benefit Spec.

Respondent:

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

ADMINISTRATIVE LAW JUDGE:
Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. Petitioner applied for MA on October 25, 2012. By letter dated May 3, 2013, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on June 26, 2013.

3. DDB's basis for determining that the petitioner was not disabled was code N32 – a severe impairment that does not prevent substantial gainful activity in a different occupation.

4. The petitioner was not employed at the time of hearing. She does work 12.5 hours weekly at a church daycare in non-summer months.

5. The petitioner has been diagnosed with psychological problems. The petitioner does not suffer from an organic mental disorder, a psychotic disorder, mental retardation, a somatoform disorder, or autism or another developmental disorder. Her documentation establishes that the petitioner suffers from depressive syndrome (an affective disorder), panic disorder without agoraphobia, and borderline personality disorder. Manic symptoms have not been documented. She does have symptoms of decreased energy, feeling of guilt, and difficulty in concentration/thinking. The petitioner's thought processes are linear and goal oriented. Her judgment is adequate, hygiene is described as good, and her speech is within the normal range. She denies homicidal or current suicidal ideation. The petitioner takes the medications Cymbalta, Lamictal, Inderal, Lorazepam, Propranolol and Desyrel for her condition. The petitioner has received some counseling therapy. The petitioner has a mild restriction in her ability to perform her "activities of daily living." She has moderate limitations in social functioning and maintaining concentration, but no "marked" limitations in these domains. In the last year, the petitioner was hospitalized once in October 2012 for mental health treatment.

6. The petitioner was evaluated by [redacted], Psy.D., in April 2013. She noted the October 2012 mental health hospitalization. [redacted] concluded that the petitioner "is not likely to have difficulty understanding, recalling, and carrying out simple instructions. She was able to follow directions without difficulty in this evaluation ... [she] is not likely to have difficulty responding appropriately to her supervisors and co-workers, as she was polite and appropriate today ...[she] may have difficulty maintaining concentration and attention .... [she] may not have adequate psychological resources to deal effectively with work stresses or adapt to changes."

7. The petitioner also has arthritis in her neck/shoulder area, and tendonitis in her left wrist. The petitioner is limited to "medium" work (as opposed to heavy work).

8. The petitioner's past relevant employment was as a telemarketer, daycare worker, group home staff member, and office worker in a dental office.

9. The petitioner's impairments, in total, constitute a "severe" impairment. She cannot return to some of her prior employments due to their requirement that she work around other people. DDB does assert that the petitioner could do other, unskilled, low-stress work.

10. The petitioner, age 49 at the time of hearing, has a 12th grade education. She also earned a technical college certification as an occupational therapy assistant. Her previous employment was in semi-skilled and unskilled occupations.

11. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application.

DISCUSSION

The standards used for determining disability are set forth at 20 C.F.R.§416.901 and 20 C.F.R. 404, Appendix 1. To be found disabled, the petitioner must pass several steps in a prescribed disability evaluation procedure. 20 C.F.R.§416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." She is not; therefore, she passes the first test in the sequential evaluation. The second requirement in the evaluation is that she has a severe impairment expected to last for at least 12 months. A severe impairment is one which significantly limits a person's physical or mental abilities to do

basic work activities. I conclude (and the DDB has conceded by using the denial code N32) that the petitioner has a severe impairment.

The third step in the sequential evaluation is the determination as to whether the petitioner's impairments meet or are equivalent to one of the disability listing standards found in Appendix 12. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of her ailments meets or equals a listed standard. The petitioner's condition does not meet the relevant Listing 12 standard, which pertains to the mental health disorders. For example:

> **12.04** ***Affective disorders***: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.
>
> The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.
>
> A. Medically documented persistence, either continuous or intermittent, of one of the following:
>
> 1. Depressive syndrome characterized by at least four of the following:
>
> a. Anhedonia or pervasive loss of interest in almost all activities; or
>
> b. Appetite disturbance with change in weight; or
>
> c. Sleep disturbance; or
>
> d. Psychomotor agitation or retardation; or
>
> e. Decreased energy; or
>
> f. Feelings of guilt or worthlessness; or
>
> g. Difficulty concentrating or thinking; or
>
> h. Thoughts of suicide; or
>
> i. Hallucinations, delusions, or paranoid thinking; or
>
> 2. Manic syndrome characterized by at least three of the following:
>
> ...

Id., §12.04, *et seq*., online at http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm.

The petitioner has at least three of the depressive symptoms above, related to depression: anhedonia, decreased energy, and difficulty concentrating. No treatment provider has observed manic symptoms. Thus, she does not meet either the "A" or "B" symptoms tests. We must therefore turn to the "C" criteria.

"C" refers to "repeated episodes of decompensation, each of extended duration." Decompensation episodes are medically documented incidents that require significant medication changes or hospitalization//halfway house placement. "Repeated episodes" of decompensation means three episodes, lasting at least two weeks, within one year, per Social Security standards. That has not occurred here. Thus, the petitioner's condition does not satisfy the above criteria.

In the fourth step of the evaluation process, DDB considers whether an applicant can return to prior employment. If the applicant *can* return to one of her prior jobs, she is not disabled. If the applicant *cannot* return to any of her prior jobs, the analysis moves to the fifth step. The petitioner and DDB agree that the petitioner cannot return to some of her prior jobs.

The fifth step of the evaluation process considers whether the petitioner, when her age, education, job skills and exertional capacity are considered, retains the ability to do *any* work in the economy. In disability jargon, the petitioner is a younger person, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. She has no communicative limitations. The DDB asserts that the petitioner has the ability to exert herself at the level required for medium work. The remaining exertional categories are sedentary and light work. Light work involves the occasional lifting of 10 pounds, while medium work involves regular lifting of objects of up to 25 pounds. Even if I assume that the petitioner was only capable of light work, at her age and education level, she would still be considered "not disabled." See Appendix 2, rule 202.21.

CONCLUSIONS OF LAW

Petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is **ORDERED**

That the petition for review 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 27th day of August, 2013

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\sNancy J. Gagnon
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 27, 2013.

Outagamie County Department of Human Services
Disability Determination Bureau