



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/150595

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 20, 2013, 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 August 22, 2013, by telephone.

The issue for determination is whether petitioner is disabled.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[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 21-year-old resident of Jefferson County.
2. Petitioner was involved in a car accident in December, 2012. He suffered a broken neck, shoulder, and left ankle. After treatment he has difficulty using his left arm, and he still limps on the left leg. He is limited to light duty work.
3. Petitioner applied for MA on December 28, 2012 and was granted presumptive MA. By a letter dated April 5, 2013 the DDB determined that petitioner was not disabled. Petitioner sought reconsideration but the DDB affirmed its determination on July 8, 2013. Following the DDB denial the presumptive disability MA also ended.

4. Petitioner is a high school graduate. Prior work experience was as a painter and a farm laborer.

### **DISCUSSION**

To be eligible for MA, an adult male under age 65 must be disabled, blind, 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 medical condition, and his 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 he 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 he 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 orthopedic-type impairments found at Listing 1.01 require virtually total loss of use of arms or legs such that the person would not be able to walk effectively or would lose fine and gross motor skills. While petitioner has problems with his arm and limbs on his leg, the impairments are not of the severity required to meet the listing.

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 not fully perform heavy work like he had done in the past, but could perform other work.

The DDB found that physically petitioner was capable of doing light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. The DDB cited Rule 202.20, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.21 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The problem for petitioner is that even if he were limited to sedentary work, the lowest level, he still would be found not disabled. Sedentary work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a). A certain amount of walking and standing can be involved in sedentary work. A person of petitioner's age and training who is able to do only sedentary work is not disabled. Rule 201.27.

Petitioner is able to do at least sedentary work. He can lift ten pounds and walk and stand while doing so. I must conclude, therefore, that the DDB correctly determined petitioner to be not disabled. While clearly

he would have been incapable of such work for several months after the accident, he has recovered sufficiently within the one-year window to be able to do at least light or sedentary work.

**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 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.

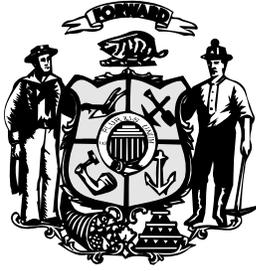
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of August, 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 August 26, 2013.

Jefferson County Department of Human Services  
Disability Determination Bureau