



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██
██

DECISION

MAP/150857

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a hearing was held on August 27, 2013, at Alma, 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:

██████████
██████████
██
██

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: No Appearance

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Buffalo County.
2. The petitioner applied for Medicaid Purchase Plan benefits on December 18, 2012. The Disability Determination Bureau most recently denied the benefits with a finding that she is not disabled on July 19, 2013.
3. The petitioner is 23 years old.

4. The petitioner received the following composite scores on a WAIS-IV IQ test taken she was a senior in high school:
 - a. Verbal Comprehension: 68
 - b. Perceptual Reasoning: 81
 - c. Working Memory: 69
 - d. Processing Speed: 86
 - e. Full Scale IQ: 71
 - f. General Ability: 72
5. The petitioner has no other significant mental limitations.
6. The petitioner does not demonstrate any of the following:
 - a. Marked restriction of activities of daily living; or
 - b. Marked difficulties in maintaining social functioning; or
 - c. Deficiencies of concentration, persistence of pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
 - d. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).
7. The petitioner graduated from high school but had a modified curriculum.
8. The petitioner has been employed for five years at a family restaurant. She currently works 35 hours a week and earns \$8 per hour as a cook. The restaurant has two or three other cooks. It makes no special accommodation for the petitioner.
9. The petitioner has no current significant physical limitations or health problems.

DISCUSSION

The Medicaid Purchase Plan allows those who are disabled but wish to work to receive medical assistance. Wis. Stat. § 49.472. Recipients pay a certain amount of their income toward Medicaid premiums. Before Wisconsin received an exemption from the federal government that allowed it to offer the Medicaid Purchase Plan, those employed at least half-time were barred from receiving medical assistance as a result of a disability. Among the requirements to receive benefits under the program is the following: “The individual is engaged in gainful employment or is participating in a program that is certified by the department to provide health and employment services that are aimed at helping the individual achieve employment goals.” Wis. Stat. § 49.472(3)(g). The petitioner meets this requirement because she works 35 hours per week at \$8 per hour.

To qualify as disabled, even under the Medicaid Purchase Plan, a person must meet the definition of that term as it is used for Supplemental Security Income (SSI). Wis. Stat. § 49.47(4)(a)4. 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 that will, or has, lasted at least twelve months. To determine if this definition is met, the applicant’s current employment status, the severity of her medical condition, and 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.

Employment alone cannot bar an applicant from receiving Purchase Plan benefits or the entire purpose of the program would be undermined. Therefore, in these matters it is necessary to move directly to the next step, which is for the Bureau to 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 Bureau found that petitioner has a severe impairment.

The Bureau was then required to determine whether the petitioner has an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The Bureau found that she meets or equals none of the listings. She has a mental impairment. To meet the listing for mental retardation, which is the listing relevant for consideration here, her full scale, verbal scale, or performance scale IQ must be below 60, or be between 60 and 70 with additional significant mental or physical limitations that affect her ability to work or two of the following limitations:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence of pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

20 CFR Pt. 4040, Subpt. P, App.1. § 12.05 C. 1 and 2.

The petitioner's verbal is 69. She does not have additional mental or physical limitations, so she must show she has two of the limitations listed above. There is no evidence that she has any of them. Therefore, she does not meet the listing for mental retardation.

If the impairment does not meet the listings, the Bureau must next determine whether she can perform past jobs. 20 C.F.R. § 416.960. Although disqualifying an applicant from the purchase plan merely because she can work would undermine the program's stated goal of allowing disabled persons to work, past decisions have looked at whether the person requires significant accommodations to do the work. See *DHA Decisions No. MAP-60/48115, No. MDD-03/58813, MAP-9/68575, and MAP/141868*.

The petitioner has worked at a family restaurant for five years. Her mother, who filed the MA disability application on her behalf, indicated in that application that the petitioner received special accommodations and that the job was "essentially sheltered." Her mother did not appear at the hearing, so I could not ask her questions about this. The petitioner did and testified that she cooked and did the work without any special accommodations. I do not doubt that, given her IQ, she at least occasionally has some difficulty with her work. But I must rely on the evidence before me and the reasonable implications I can draw from that evidence. She has worked five years at the same place, which demonstrates a good work ethic. Someone who shows up ready work every day year after year is generally more valuable than a somewhat more intelligent, but less dependable, worker—especially in the restaurant industry, where high employee turnover and lack of dependability is common. Moreover, the petitioner answered questions at the hearing without difficulty, suggesting that despite her limitations, she functions adequately in normal situations. Finally, she is working nearly fulltime at a wage exceeding the minimum. It is unlikely that her employer, who must make a profit to stay in business, would continue to employ her at this level if she were not an asset to the business. Taken as a whole, the evidence is that she can perform her work without any special accommodations. Although this is current rather than past work, the logic for finding a person who can perform past work not disabled is even stronger when applied to current work: a disability finding is based upon one's ability to work, and a background of successful employment demonstrates this ability. The petitioner not only has demonstrated an ability to work in the past, she continues to do so now. Therefore, I must find that she is not disabled.

In making this decision, I do not question that she has significant problems that may require medical care. However, because the law holds that a finding of disability depends primarily upon a person's ability to work rather than upon her medical needs, I must uphold the Disability Determination Bureau's decision.

CONCLUSIONS OF LAW

The petitioner is not disabled.

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 13th day of September, 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 September 13, 2013.

Buffalo County Department of Social Services
Division of Health Care Access and Accountability