



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/150924

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 19, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on September 12, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

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:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Kenosha County.
2. On April 16, 2013, the Petitioner submitted a Medicaid Disability Application (MADA) to the agency.
3. Petitioner was injured in a work accident in 2008. The Petitioner had spinal fusion surgery in March, 2009. He has not worked since 2008. Petitioner completed 11.5 years of secondary school education. His previous jobs including painting and maintenance work.

4. Petitioner's primary complaint is back pain. As a result of the pain, he has decreased range of motion in flexion, extension, lateral bending and rotation of his lumbar spine. In physician visits on February 2, 2012, April 19, 2012, July 1, 2012, October 4, 2012, December 6, 2012, February 14, 2013 and May 2, 2013, the Petitioner consistently ranked his back pain as 5/10. He reported leg pain ranging from 0/10 to 3/10. The physician consistently noted that Petitioner has a "slow, steady gait," that he "sits comfortably," that he is "slow to rise from seated to standing position," that he is able to independently get on the examination table, that he has "good strength and tone" in his upper extremities and right lower extremity. In the most recently visit on May 2, 2013, the physician noted that there was mild to moderate weakness in the Petitioner's left lower extremity. The Petitioner consistently reported aggravation of his pain with exertional activities and some relief from pain with medications and a TENS unit. He further consistently complained of numbness and tingling. The physician noted the source of Petitioner's pain is unknown as imaging does not show any abnormality in spinal alignment, only mild disc bulging at one location and a small amount of fluid at another location in the lower spine. Findings are otherwise normal.
5. On June 27, 2013, the agency issued a notice to the Petitioner informing him that the agency denied his request for a finding of disability.

### DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with federal social security/SSI standards. See Wis. Stat. § 49.47(4)(a)4. 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." Petitioner is currently not working so he is not engaged in "substantial gainful activity."

The second requirement in the evaluation is that he 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. The petitioner has had back and leg pain since his injury in 2008. The pain restricts the amount of walking, sitting, driving, stooping and crouching that he can perform. Based on a review of medical records which are consistent with regard to the amount of pain he is experiencing, it is expected that this difficulty will continue for a year.

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 1, Subpart P, Part 404. The listings are impairments that are disabling without additional review. 20 C.F.R. § 416.925(a). The agency determined the Petitioner's impairments do not meet or equal a standard at Listing 1, which pertains to the musculo-skeletal system:

#### 1.01 Category of Impairments, Musculoskeletal

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

...

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord.

With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, ... .

1.05 Amputation (due to any cause). ...

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 Fracture of an upper extremity with nonunion of a fracture ...

1.08 Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk, or face and head, under continuing surgical management, as defined in 1.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 1.00.

Id., §1.01, et seq., online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.

Although it is clear the Petitioner has significant pain, there is no evidence that he meets one of the listings.

The fourth and fifth steps occur if the impairment does not meet the listings. The Bureau must determine whether he can perform past jobs. If not, then it must determine if he can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. Petitioner's previous work involved maintenance/custodial work and painting. The Petitioner does have some

limitations with regard to stooping and crouching. The physician reports also reference some restriction in range of motion in his back. "Light work" as defined in the regulations involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. "Medium work" involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. Based on the evidence, I conclude that the Petitioner cannot perform past work because custodial work and painting would generally be considered more than light work and the evidence suggests that Petitioner cannot perform medium work. 20 C.F.R. § 404.1567(a).

Because he cannot perform past work, it is necessary to determine, as part of the fifth step of the process, whether he can perform other work that would be considered substantial gainful activity. 20 C.F.R. § 416.960(c). In order to determine whether he can perform gainful activity, it is necessary to look at his age, schooling and training, marketable job skills, and physical ability. 20 C.F.R. § 404.1567(a). Petitioner is 47 years old, which is still considered to be a younger individual. Generally, a younger person who can do unskilled sedentary work is not disabled. 20 C.F.R. Pt. 404, Subpt. P. App. 2, Rule 201.18. "Sedentary work" is defined in the regulations as lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. In the Petitioner's case, the physician consistently notes that the Petitioner is able to ambulate with a slow, steady gait and is able to sit comfortably for the duration of the physical examination. The physician also consistently notes that the Petitioner is able to get on to the examination table without assistance. In addition, it is noted that the Petitioner's pain is able to be managed with medications and a TENS unit. The agency determined the Petitioner is able to do light work in addition to sedentary work. Based on the evidence and the testimony of the Petitioner, it is not clear that he can perform light work but the evidence suggests he can at least perform sedentary work. Therefore, I must conclude that the agency properly determined he is not disabled.

### **CONCLUSIONS OF LAW**

The agency properly concluded the Petitioner is not disabled.

**THEREFORE, it is**

**ORDERED**

That the petition be, and hereby 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).

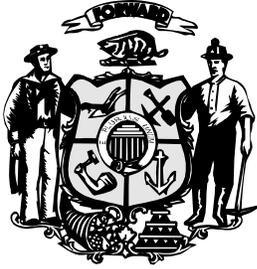
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson 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 Milwaukee,  
Wisconsin, this 30th day of September, 2013

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\sDebra Bursinger  
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 30, 2013.

Kenosha County Human Service Department  
Disability Determination Bureau