



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/151013

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 25, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a telephonic hearing was held on September 04, 2013, at Milwaukee, 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 Milwaukee County who resides in the community.
2. The petitioner worked as a “fabricator” and sheet metal worker. His last regular, full time employment was during 2012 as a sheet metal worker. During March, 2012, he fell at his employment and fractured his left hip and had other injuries.
3. Petitioner applied for MA disability benefits during August, 2012, due to medical complaints of problems with back/pelvic pain and weakness, depression, arthritis, loss of balance, and high blood pressure.

4. The petitioner completed a July, 2013 medical consultative exam (CE) in order to obtain updated medical evaluation from October, 2012. That CE showed that petitioner has: spasm/tenderness in his lumbar spine; forward flexion to 60 degrees; and extension, lateral bend, and rotation all limit to 20 degrees. The physician conducting petitioner's CE noted no evidence of any sensory, motor or focal neurological deficits with normal gait/station. However, he was unable to walk on heels/toes.
5. Petitioner has pain in his lower back and left hip pain which is sometimes worsened with standing, walking, lifting and bending. Petitioner can stand for at least 5 minutes, walk a block, lift up to 20 pounds occasionally, lift 10 pounds frequently, and occasionally stoop or crouch. He does not regularly carry any assistive devices, but sometimes uses a cane. He is basically not limited in his ability to sit, and admitted being able to sit about 6 hours in a day.
6. The Disability Determination Bureau (DDB) sent a February 8, 2013 notice to the petitioner stating that he was determined not disabled because his conditions were not expected to remain severe enough for 12 months in a row to prevent him from working. Petitioner sought reconsideration, but DDB affirmed its denial decision.
7. Petitioner has a 9<sup>th</sup> grade education, and past relevant work as a fabricator from 1988 to 2012.
8. The petitioner is generally able to basically perform his activities of daily living (ADLs). He prepares simple foods for his meals, does household cleaning, does simple household repairs, and leaves home once a day to get mail. He shops for his food and household items about once every two weeks. He socializes with family, goes to the library regularly to use the computer and watches TV.
9. The petitioner has not offered reliable medical evidence to establish that he meets any of the Listings of Impairments.
10. The petitioner has not established that he is unable to perform sedentary employment.
11. DDB determined that as of July, 2013, petitioner has had a residual functional capacity (RFC) for sedentary, unskilled work per Vocational Rule 202.11.

### 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.

To be eligible for state MA benefits, a person between the ages of 18 and 65 must be blind or totally and permanently disabled. A disability determination is based upon the conclusion that the individual is:

Unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(Emphasis added).

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/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 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 sedentary Residual Functional Capacity (RFC) work as of his July, 2013 consultative exam.

The DDB reviewed petitioner's medical and physical functional capacity reports. The DDB reviewer found that petitioner has adequate attention, concentration, and interpersonal skills for sedentary, unskilled, low stress employment. During the hearing, petitioner explained that he does have pain and some difficulty much of the time. Petitioner does have medical problems, but they are not so severe as to prevent him from participating in a sedentary, low-skill, job. In fact, during the hearing petitioner admitted that he probably could perform a sedentary 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 10th day of September, 2013

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\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 September 10, 2013.

Milwaukee Enrollment Services  
Disability Determination Bureau