



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/151166

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on September 11, 2013, at Racine, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly denied the Petitioner's application for Medical Assistance (MA).

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:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County.
2. Petitioner filed an application for elderly, blind or disabled Medicaid (MA) with the local agency in October 2012 alleging disability. The application was forwarded to the Disability Determination Bureau (DDB).
3. The DDB found that Petitioner was not disabled as the Medicaid program uses that term. A denial letter was sent to Petitioner. She sought reconsideration in May 2013, but the DDB affirmed its original determination and forwarded the matter to the Division of Hearings and Appeals for a

hearing. The DDB concluded that Petitioner is capable of light unskilled work. It questioned the degree of severity in Petitioner's reporting of medical and psychiatric problems.

4. Petitioner is 53 years of age (██████████). She has completed the 12th grade.
5. Petitioner was working at the time of the hearing at a Dollar Tree store as a cashier earning \$7.37 per hour and working about 15 hours per week. Thus she earns about \$440.00 per month. The primary past work experience for Petitioner was as a meat wrapper.
6. Petitioner's Medicaid application is based on diagnoses which include left eye blindness and poor eyesight in her right eye. She also noted anxiety, memory difficulties and headaches in her reconsideration request. She uses a magnifying glass to read with her right eye and has difficulty, e.g., reading the numbers on credit cards that she must process as a cashier.
7. The DDB file indicates there is no binding Social Security decision.

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. Stats. §49.47(4)(a)4.* Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the MA application is binding on a State Medicaid (MA) agency. Per the DDB there is no binding Social Security finding here so the Division of Hearings and Appeals must decide whether Petitioner is disabled as that term is used by in the Federal Social Security/SSI standards, i.e., must proceed to make a determination as to whether the Petitioner is disabled under the regulations governing the SSA and MA programs as to disability.

As noted above, a person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for Medicaid as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). *§ 49.47(4)(a)4., Wis. Stats.* Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. *20 CFR 416.920.*
2. An individual who does not have a "severe impairment" will not be found to be disabled. *20 CFR 416.920(c).* A condition is not severe if it does not significantly limit physical or mental ability to do basic work. *20 CFR 416.921(a).*
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) *20 CFR 416.920(d).*

4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. *20 CFR 416.920(f)*.
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. *20 CFR 416.920(f)*.

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's condition does not meet the SSA listings an analysis of capability to perform past work must be made. If the individual cannot perform past work a determination of the residual functioning capacity to perform other work must be made. *20 CFR 416.920(a)*.

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence; however the opinions of the doctors as to whether the Petitioner is disabled are not relevant. The definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

Here the Petitioner is currently working but at less than the amount considered to be at a substantially gainful activity (\$1740 if blind and \$1040 if not blind). See <http://www.ssa.gov/oact/cola/sga.html>. The DDB file is silent as to whether Petitioner has a severe impairment. I conclude that she does, however, have a severe impairment as her conditions do significantly limit her ability to do basic work. See *20 CFR §404.1521*.

The next question is whether any of the Petitioner's conditions meet the Listings. The listings for are found at *20 CFR Pt. 404, Subpt. P, Appendix 1, Part A, §§ 1.00 to 14.00*. The Petitioner reports the medical diagnoses as noted at Finding # 4. I have reviewed the listings and the evidence is not quite sufficient to demonstrate that Petitioner meets those requirements. The listing for blindness requires that vision in the good eye cannot be greater than 20 degrees from point of fixation. Petitioner's is just past that as her physician states that she can just barely see past 20 degrees from point of fixation. See *letter of December 28, 2012 from Dr. Waldeck*.

The next question would then become whether the Petitioner has the residual functional capacity to perform past work. Past work includes any work done in the 15 years prior to application. *20 CFR 416.960(b)(1)*. Petitioner's primary past work has been in the area of meat wrapping. I cannot find that she has the ability to do that type of work because of her vision limitations.

This would then bring the analysis to the final step, a determination as to whether her impairments coupled with her age, education, past work experience and residual function capacity preclude her from doing other work; here light work. The DDB concluded that Petitioner is capable of light work under 20 CFR Pt. 404, Subpt. P, App 2, §202.13 – given Petitioner's age¹ (53), education (12^h grade) and work experience.

I include the Federal definitions of both sedentary and light work:

¹ Per 20 CFR Pt. 404, Subpt. P, App 2, §200.00(g) a person age 50-54 is approaching advanced age.

§ 404.1567 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, *light*, *medium*, *heavy*, and *very heavy*. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work*. Sedentary work involves 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.

(b) *Light work*. Light work 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, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

...

20 CFR §404.1567.

Here I am concluding that Petitioner is not capable of light work – rather she is capable of sedentary work at best. Given Petitioner’s age (53), educational level (high school graduate) and work experience which is unskilled or not transferrable, I conclude that she is disabled under 20 CFR Pt. 404, Subpt. P, App 2, Rule 201.12.

Though the DDB file states that there is no binding Social Security decision in this case, Petitioner states she has applied for Social Security. She will, therefore, at some point be receiving a decision as to her Social Security application. Petitioner is advised here that the Social Security decision is controlling as to disability and may reverse the decision here.

CONCLUSIONS OF LAW

That the available evidence does demonstrate that Petitioner meets the criteria necessary for a finding that she is disabled as that term is defined by Social Security regulation.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to continue processing Petitioner’s application for disability based Medicaid and find her eligible retroactive to the date of application provided she meets all other Wisconsin Medicaid requirements. The agency must commence that continued processing within 10 days of the date of this order.

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 11th day of October, 2013

\sDavid D. Fleming
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 October 11, 2013.

Racine County Department of Human Services
Disability Determination Bureau