



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152127

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 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 October 30, 2013, by telephone. The record was held open 32 days for petitioner to submit additional medical documentation. Additional documentation was received November 18, 2013.

The issue for determination is whether petitioner is disabled.

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:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 60-year-old resident of Brown County.
2. Petitioner applied for MA on January 28, 2013. By a letter dated August 30, 2013, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration but the DDB affirmed its determination on September 9, 2013.
3. Petitioner has a high school education. He formerly worked as a home remodeler.
4. Petitioner has chronic obstructive pulmonary disease (COPD). He is impaired in walking, lifting, carrying, and travel, but is unimpaired for sitting, standing, and handling objects. He has no

problems with vision, hearing, or speaking. The DDB determined that petitioner is capable of medium level exertion.

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 listing for COPD, no. 3.02, requires specific laboratory findings in a number of areas. The DDB made no mention of such findings and none are alleged. There is nothing in the record suggesting that petitioner meets the requirements.

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 past work, but could perform other work.

The DDB found that physically petitioner was capable of doing medium level work. Medium level work means lifting up to 50 pounds and carrying of objects up to 25 pounds. 20 C.F.R. §416.967(c). The DDB cited Rule 203.14, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 232.14 provides that a person of petitioner's age and training who is able to do medium work is by definition not disabled. The DDB relied on petitioner's medical records, the result of an independent evaluation, and the findings by a DDB medical consultant.

I note that the independent evaluator found that petitioner was unable to lift and carry objects above 20 pounds. The DDB medical consultant gave the finding little weight because it did not follow from the objective test results and petitioner's lack of treatment for the condition. It is clear that the DDB consultant reviewed the findings thoroughly and thoughtfully, and thus I will not challenge the consultant's conclusion in the absence of other competing evidence. The most recent medical record, dated October 23, 2013, noted that petitioner had no shortness of breath, cough, hemoptysis, or wheezing, and he had no heart symptoms.

Petitioner testified about his medical problems. He also stated that he might have Hepatitis C. The record was held open for verification of the Hepatitis, but the records that were submitted are inconclusive about it. In the November 18 submission to this office a note dated November 5 states that the results were not back yet, and petitioner did not submit anything after November 18.

Based upon the evidence in the record I conclude that the DDB finding that petitioner is capable of medium level work, and thus is not disabled, must be upheld.

Petitioner may wish to consider re-applying for Wisconsin Medicaid for January onward online at either <https://access.wisconsin.gov> or www.healthcare.gov. As of now, from January 1, 2014 forward, a person with income below \$11,170 will not have to prove that he is disabled to qualify for Wisconsin Medicaid, although the state legislature is considering moving that date back to April 1, 2014.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility.

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 4th day of December, 2013

\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 December 4, 2013.

Brown County Human Services
Disability Determination Bureau