



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAP/152130

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau (DDB or Bureau) in regard to Medicaid Purchase Plan (MAPP), a Medical Assistance variant, a hearing was held on October 30, 2013, at Marinette, Wisconsin.

The issue for determination is whether the petitioner is disabled for MAPP 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

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Marinette County.
2. Petitioner applied for the Medicaid Purchase Plan (MAPP) on April 15, 2013. MAPP is a variant of the Medical Assistance (MA) program, for which the fact of the applicant's current employment is disregarded. By letter dated July 22, 2013, the Bureau found that petitioner was

not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on September 12, 2013.

3. DDB's basis for determining that the petitioner was not disabled was code N35—"individual has an Impairment that prevented Substantial Gainful Activity at Time of Adjudication But is Not Expected to Prevent SGA for a Period of 12 Months."
4. The petitioner is currently employed part-time at a motel, which is managed by her mother.
5. The petitioner has an IQ of 91, and has not been diagnosed with a specific learning disability. Her receptive language skills have been observed to be below normal, and the petitioner is not good with handling money. More significantly, she fell and broke her left femur in January 2013. Surgery (open reduction and internal fixation of the femur with a plate and screws) was performed in that month. Surgery was followed by rehabilitation in a nursing home. Her physician cleared her to return to work on March 13, 2013, subject to a 10 pound lifting restriction. The petitioner reports that she is typically unable to stand for more than 6 minutes.
6. The petitioner has been advised to not lift more than 10 pounds. She is ambulatory with a cane, and is able to walk for slightly less than one block. The petitioner is able to perform her self-cares independently.
7. The petitioner's impairment constitutes a "severe" impairment. DDB concedes that the petitioner cannot return to some past employment activities. DDB does assert, however, that the petitioner could do other, sedentary work.
8. The petitioner, age 45, graduated from high school. The petitioner has been employed in motel operations for many years.
9. There is no documentation that the petitioner has applied for SSI or Title II Social Security benefits within one year of the instant MAPP application.

DISCUSSION

The Medicaid Purchase Plan (MAPP) is a subprogram of the Wisconsin Medicaid Program. It allows disabled adults who are working or want to work to become or remain Medicaid eligible, even if employed, since there are higher income limits. *MA Eligibility Handbook (MEH)*, §26.1, online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/>.

The standards used for determining disability are set forth at 20 C.F.R.s.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.s.416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." She is currently employed. Therefore, she does not pass the first test in the sequential evaluation for "regular MA;" however, she remains potentially eligible for the Medicaid Purchase Plan (MAPP). The second requirement in the evaluation is that she 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 DDB has determined that the petitioner does not have a severe impairment, because it does not believe that it will keep her from working for 12 months. Specifically, the petitioner underwent a successful surgery in mid-January 2013. She has progressed from using a wheelchair, to a walker, and now to a cane. With continued home exercise and physical therapy, the DDB believes that the petitioner will be able to work by mid-January, 2014. After reviewing the medical records, including post-op visit notes, I agree with the DDB's judgment.

For informational purposes only, I will include a description of the third step in the evaluation process. 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. The petitioner's ailment is not likely to meet or equal a listed standard by February 2014. These are the pertinent musculoskeletal disorder listings:

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.

1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with 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.

1.04 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: ...

1.05 Amputation (due to any cause)

A. Both hands;

or

B. One or both lower extremities...

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 ...

Section 1.01 *et seq.* in 20 C.F.R. Appendix 1 to Subpart P (immediately after § 404.1599), "Listing of Impairments".

I note that, if the petitioner's adjusted gross income falls under \$11,490, she may become eligible for Medical Assistance (BadgerCare Plus) on either January 1, 2014 or April 1, 2014. Due to a change in the law, she will no longer have to prove that she is disabled to qualify for this program (she will just have to be low-income). The reason for the two dates is that the law on the books as of the date that I am writing this decision says January 1, but the state legislature is expected to act this week to push it back to April 1, 2014. Medical Assistance/BadgerCare Plus can be applied for online at access.wi.gov.

CONCLUSIONS OF LAW

Petitioner is not disabled (for failure to meet the 12-month "durational requirement") as that term is used for MAPP purposes pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is

ORDERED

That the petition 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 4th day of December, 2013

\sNancy ■ Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 4, 2013.

Marinette County Department of Human Services
Division of Health Care Access and Accountability