



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████ ██████
██████████████████
██

DECISION

MDD/152131

PRELIMINARY RECITALS

Pursuant to a petition filed July 12, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on October 25, 2013, at Barron, Wisconsin. The record was left open for 45 days at the petitioner's request.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████ ██████
██████████████████
██

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Barron County.
2. The petitioner applied for medical assistance based upon a disability on February 19, 2013. Her application was most recently denied on September 11, 2013.
3. The petitioner is diagnosed with various lung problems and rheumatoid arthritis. These problems are controlled but not eliminated with medication. Without the medication she could not work.

4. The petitioner is 46 years old. She can read and write the English language.
5. The petitioner can lift 25 pounds and walk about a mile without rest.
6. The petitioner runs a daycare. She can perform all of the activities necessary for the daycare to run properly. She makes less than \$1,000 a month from the daycare.

DISCUSSION

The petitioner seeks medical assistance based upon a disability. To qualify as disabled, she must meet the disability standard set by Supplemental Security Income (SSI) regulations. 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. She is disabled if she cannot engage in any substantial gainful activity because of a medically determinable physical or mental condition that will or has lasted at least twelve months. The Disability Determination Bureau determines if an applicant meets this definition by evaluating in sequence her current employment status, the severity of her medical condition, and her ability to return to vocationally relevant past work or to adapt to new forms of employment. 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, she will be found to be not disabled without further review. If she is not working, the Bureau 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 petitioner runs a daycare, but does not make enough money for this to be considered a substantial gainful activity. The Bureau conceded that she has a severe impairment.

The Bureau was then required to determine whether she had an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The petitioner has rheumatoid arthritis and various lung problems, but none meet any of the listings.

The fourth and fifth steps occur if the impairment does not meet the listings. The Bureau must determine whether the petitioner can perform past jobs. If not, then the agency must determine if she can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. It found that she cannot do past work but could perform other work.

The petitioner is 43 years old, making her a younger individual under the rules. A younger individual who can do even sedentary work is not considered disabled. 20 C.F.R. Pt. 404, Subpt. P. App. 2, Rule 201.23. Sedentary work requires no more than occasionally lifting up to 10 pounds at a time and occasionally being able to walk and stand. The petitioner’s rheumatoid arthritis and lung problems limit her ability to work or carry on activities, but she can lift 25 pounds and walk a mile without rest. She can do these things only because medication has controlled her condition; it appears that without the medication, she could not work. I am aware that she can afford this medication only because she receives medical assistance, but the law requires me to consider her condition as it exists now. Her physical problems are serious and require frequent medical care. Unfortunately, her medical assistance eligibility does not depend upon her medical needs but rather upon her ability to engage in sedentary activities. Because she can do this, I must uphold the agency’s denial.

I note that during the hearing it was anticipated that the petitioner would be covered as of January 1, 2014, by an expansion of BadgerCare Plus to cover single persons whose income falls below the federal poverty level. However, the Wisconsin legislature has delayed this expansion until this spring. The Affordable Care Act (Obamacare) expanded Medicaid to cover those whose income is below the federal

poverty level, but Wisconsin has elected not to participate in this expansion. If the petitioner's income exceeds 100% of the federal poverty level, she can seek coverage under the Affordable Care Act.

CONCLUSIONS OF LAW

The petitioner is not disabled.

THEREFORE, it is ORDERED

That the petitioner's appeal 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, Room 651, 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 6th day of December, 2013

\sMichael D. O'Brien
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 6, 2013.

Barron County Department of Human Services
Disability Determination Bureau