



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████ ██████  
██████████████████  
████████████████████

DECISION

MDD/152853

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 03, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Lincoln County Department of Social Services in regard to Medical Assistance, a hearing was held on November 18, 2013, at Merrill, Wisconsin.

The issue for determination is

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:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Lincoln County.
2. Petitioner has cognitive delays. He has a high school diploma.
3. Petitioner has little to no work history.
4. Petitioner applied for MA based on disability on 2/20/13 on the basis of cognitive disability.
5. The DDB determined that petitioner was not disabled and affirmed that determination after reconsideration on October 14, 2013.

## 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. Petitioner's primary impairment is slight mental retardation. The listing covering mental retardation is number 12.05. To meet 12.05 C, the person must have a verbal, performance, or full scale IQ of between 60 and 70, and a physical or other mental impairment imposing an additional and significant work-related limitation of function. Petitioner FIQ is 79 and does not meet this listing.

The fourth and fifth steps occur if the impairment does 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 which would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that petitioner did not have a sufficient past work history, but that he could perform other types of work. It cites Rule 204, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.17 provides that a person between 18 and 44 years old with a high school education and minimal or no work history is not disabled if he can perform sedentary work. Similarly, Rule 202.20, for people who are limited to light work, also provides that a person of petitioner's age and education would not be considered disabled. Based on this record, petitioner could likely perform work such as dishwasher, or folding laundry or similar task.

I must conclude that petitioner is not disabled as required for MA eligibility.

## CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility because his mental impairment does not meet the listed requirements and he lacks a physical impairment that would impact his ability to work.

**NOW, THEREFORE, it is** **ORDERED**

That the petition for review 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 12th day of December, 2013

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\sJohn P. Tedesco  
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 12, 2013.

Lincoln County Department of Social Services  
Disability Determination Bureau