



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152855

PRELIMINARY RECITALS

Pursuant to a petition filed July 05, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau (DDB) in regard to Medical Assistance, a telephonic hearing was held on November 18, 2013, at Wausau, Wisconsin.

The issue for determination is whether the Disability Determination Bureau (DDB) correctly determined that petitioner was not eligible for MA as “disabled” because she was engaged in substantial gainful employment.

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:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 27 year old resident of Marathon County.
2. The petitioner was in a serious car accident on January 17, 2013 and suffered extensive injuries. She was hospitalized and then recovered in a nursing home until about June 27, 2013.
3. On or about January 18, 2013, the petitioner applied for medical assistance based upon disability from injuries from her car accident.

4. As of about June 28, 2013, petitioner has been residing with her parents in their home.
5. As of about July 1, 2013, petitioner began employment as a salesperson at the [REDACTED]. She works about 20 hours per week and receives a gross salary of about \$1,238 per month earned income. The \$1,238 is calculated by \$576 paid to petitioner every two weeks multiplied by 2.15 equals \$1,238 per month.
6. The Disability Determination Bureau (DDB) sent a notice to the petitioner finding the petitioner had substantial gainful employment (SGA), and thus she was not “disabled” under step 1 of the disability analysis sequence.

DISCUSSION

As an adult female under 65 with no minor children, the petitioner can receive medical assistance only if she is disabled. Wis. Stat. §§49.46(1) and 49.47(4). To be found disabled a person must meet the Supplemental Security Income (SSI) definition of disability. 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. A person 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. To determine if this definition is met the following are evaluated in sequence: the applicant’s current employment status, the severity of his/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 first step is to determine whether the petitioner is engaged in **substantial gainful employment**. To be considered engaged in substantial gainful employment she generally must make at least the following income:

- (ii) Beginning January 1, 2001, and each year thereafter, they average more than the larger of:
 - (A) The amount for the previous year, or
 - (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998.

20 CFR §416.974 (b)(2).

The Social Security Administration set the 2013 wage limit at **\$1,040 per month**. <http://www.ssa.gov/OACT/COLA/sga.html>. During the hearing, petitioner admitted that she earned a salary of \$576 every two weeks. The average month has 4.3 weeks, which is derived by dividing the 52 weeks in a year by the 12 months. However, petitioner is paid every two weeks (not weekly) therefore her salary is multiplied by 2.15 in a month which gives \$1,238 per month (\$576 X 2.15). Because this more than what is considered substantial gainful employment, I must find that she is not disabled. (I note that even if it is assumed there are two rather than her two week salary times 2.15 per month, her income would be \$1,152, or about \$120 more than the SSI limit for gainful activity.)

I am aware that the petitioner still has serious medical problems from her automobile accident. During the hearing, petitioner explained that she has many medical bills, is unable to drive (needs her brother to drive her), and is dependent on her parents and her brother for assistance. Unfortunately, because medical assistance uses SSI rules to determine whether one is disabled, being found disabled depends upon whether one can work rather than upon whether one needs medical care or family support. I have no authority to ignore those rules. MA rules and policy do not allow Medical Assistance based upon a disability to those who are gainfully employed. Accordingly, based upon the above, I am compelled to conclude that the DDB’s denial of petitioner’s MA application was correct.

CONCLUSIONS OF LAW

The DDB correctly denied petitioner's MA application because she is engaged in substantial gainful activity (employment), and is therefore not disabled for purposes of SSI-related MA.

THEREFORE, it is

ORDERED

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 19th day of November, 2013

\sGary M. Wolkstein
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 November 19, 2013.

Marathon County Department of Social Services
Disability Determination Bureau