



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MDD/153175

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 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 November 20, 2013, at Barron, Wisconsin.

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
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 on May 14, 2013. The Disability Determination Bureau most recently denied her application with a finding that she was not disabled on May 24, 2013.
3. The petitioner is 23 years old. She graduated from high school and has an associate degree in early childhood development.

4. The petitioner is diagnosed with Charcot-Marie-Tooth Disease, a progressive hereditary disease affecting the peripheral nerves. It leads to weakness, lack of coordination, and pain.
5. The petitioner has two jobs. She works 20 hours a week and earns \$8 per hour at a Boys and Girls. She also works 23 hours a week and earns \$11 an hour as an aid for a school.
6. The petitioner has had 11 different surgeries.
7. The petitioner cannot run, does very little twisting, and requires a railing to walk on stairs.
8. The petitioner can lift about 25 pounds. She can walk about two blocks before needing to rest.

DISCUSSION

To qualify as disabled, the petitioner 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. To be considered engaged in substantial gainful employment a person 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).

Using this formula and rounding to the nearest \$10, the Social Security Administration set the 2013 wage limit at \$1040 per month. <http://www.ssa.gov/OACT/COLA/sga.html>. The petitioner works 23 hours a week and earns \$11 an hour at one job; she earns \$8 an hour and works 20 hours a week at another job. Her total income is \$413 per week. Multiplying this by 4.3, the number of weeks in an average month, puts her monthly income at \$1,775.90 per month. This is substantial gainful employment because it exceeds \$1040 per month. Thus, although she has significant physical problems, which are noted in the Findings of Fact, she cannot be considered disabled and is therefore ineligible for medical assistance.

CONCLUSIONS OF LAW

The petitioner is not disabled because she is engaged in substantial gainful employment.

THEREFORE, it is

ORDERED

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, 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 21st day of November, 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 November 21, 2013.

Barron County Department of Human Services
Disability Determination Bureau