



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

In the Matter of

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

DECISION

MDD/153202

PRELIMINARY RECITALS

Pursuant to a petition filed May 24, 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 ["MA"], a Hearing was held via telephone on December 11, 2013.

The issue for determination is whether petitioner is disabled for purposes of MA.

There appeared at that time via telephone 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:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (20 years old) is a resident of Grant County.
2. In December 2012 petitioner filed a *Medicaid -- Disability Application*.

3. DDB sent petitioner a *Medicaid -- Disability Decision Notice* dated April 18, 2013 informing petitioner that he does not qualify for MA because his condition does not meet the disability requirements of Social Security law and regulations.

4. On May 24, 2013 petitioner filed with DDB a *Medicaid -- Adult Reconsideration Request*; thereafter, DDB affirmed its previous decision that petitioner does not qualify for MA because his condition does not meet the disability requirements of Social Security law and regulations.

5. Petitioner is currently employed at [REDACTED]; he works 30 to 40 hours per week and makes \$9.75 per hour; his weekly gross pay is at least \$292.50 (\$9.75 per hour X 30 hours); his gross monthly pay is at least \$1,170.00 (\$292.50/week X 4 weeks/month); petitioner is not blind.

DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of *disabled* that is used for Supplemental Security Income ["SSI"] purposes. See, Wis. Stat. § 49.47(4)(a)4. (2011-12). The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I (§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

To be *disabled*, for an adult, means the inability to do any substantial gainful activity (i.e., the inability to work) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. See, 20 C.F.R. § 416.905(a) (2011). Unless the impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. See, 20 C.F.R. § 416.909 (2011).

To determine if a person is disabled, a 5 Step prescribed sequential evaluation procedure is used. See, 20 CFR § 416.920 (2011). If a person can be found to be disabled or not disabled at any point in the prescribed sequential evaluation procedure the prescribed sequential evaluation procedure is terminated and no further evaluation is made. See, 20 C.F.R. § 416.920(a)(4) (2011).

The 5 Step prescribed sequential evaluation procedure is as follows.

(1) Current Work

The first step in the prescribed sequential evaluation procedure is to determine whether the person is currently working and, if so, if the work the person is doing is substantial gainful activity. For an adult to be disabled they must be unable to do any substantial gainful activity which exists in the national economy. See, 20 C.F.R. § 416.905(a) (2011). If a person is working and the work he or she is doing is *Substantial Gainful Activity*, that person will be found not disabled regardless of his or her medical condition or his or her age, education, and work experience. see, 20 C.F.R. § 416.920(b) (2011).

A *Substantial Gainful Activity* ["SGA"] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. See, 20 C.F.R. §§ 416.910 & 416.972 (2011).

Petitioner is currently working. It is generally considered that the earnings from a person's work as an employee will show that the person has engaged in SGA if the earnings average more than \$1,040.00 a month in calendar year 2013 (and \$1,070.00 per month in calendar year 2014). Social Security Administration ["SSA"] *Program Operations Manual System* ["POMS"] DI 10501.015.B & DI 24001.025.B.2.; See also, 20 C.F.R. § 416.974(b)(2)(ii) (2011). When calculating earnings the value of any subsidized earnings and the value of any impairment-related work expenses (such as attendant care services, medical devices, prosthetic devices, special work-related equipment, drugs, etc.) are subtracted from gross income. 20 C.F.R. §§ 416.974(b)(1) & 416.976 (2011). There is no evidence that petitioner has any subsidized earnings or impairment-related work expenses. Petitioner earns, on average, more than \$1,040.00 a month from his employment. Therefore, petitioner is not disabled for purposes of MA.

It is not necessary to consider the remaining 4 steps in the 5 Step prescribed sequential evaluation procedure. See, 20 C.F.R. § 416.920(a)(4) (2011).

Since petitioner is employed he may wish to apply for MA under the Medicaid Purchase Plan ["MAPP"].

CONCLUSIONS OF LAW

Petitioner is not disabled for purposes of MA because he is currently working at a *Substantial Gainful Activity* ["SGA"].

NOW, THEREFORE, it is

ORDERED

That 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, 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 13th day of December, 2013

\sSean P. Maloney
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 13, 2013.

Grant County Department of Social Services
Disability Determination Bureau