



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/152316

PRELIMINARY RECITALS

Pursuant to a petition filed April 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services in regard to Medical Assistance, a rehearing was held on April 07, 2014, at Appleton, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

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 Outagamie County.
2. Petitioner applied for state MA based on disability on October 5, 2012.
3. The Disability Determination bureau gathered records and determined petitioner was not disabled.

4. Petitioner has a history of mental illness including personality disorder, depressive disorder, and anxiety disorder.
5. The Department sent notice on March 20, 2013 to petitioner informing her that she was not eligible for MA.
6. Petitioner requested reconsideration on April 26, 2013.
7. On September 12, 2013, the DDB affirmed its denial.
8. On January 7, 2014, petitioner's representative at the ADRC submitted to this ALJ a packet of additional documents and records including a psychological report that was not previously submitted by petitioner to the DDB. The report stems from an August 2013 visit.
9. At hearing, petitioner's representative argued that the psychological report was not previously considered by the DDB and that the report reflects an IQ of 64 that would, in conjunction with the other medical issues, lead to a finding of disability under listing 12.05(C).
10. Petitioner requested rehearing which was granted.

DISCUSSION

To be eligible for MA, an adult female under age 65 must be disabled, blind, pregnant, 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 her medical condition, and her 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, she is found to be not disabled without further review. If she is not working, the DDB 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 DDB found that petitioner is not working and that she 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 petitioner argues that she is disabled based on listed impairment 12.05(C). This provision states:

12.05 Intellectual disability: intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

* * *

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

At the initial hearing, the argument was presented by petitioner that a seizure disorder was the “physical or other mental impairment imposing an additional and significant work-related limitation of function” in addition to the low IQ. Following my decision in that matter, in which I denied disability based on the infrequency and apparent recent control through medication of the seizure disorder, petitioner filed for rehearing.

Petitioner now argues that the additional “physical or other mental impairment” is based on the psychiatric review technique data from Dr. [REDACTED] (see ex. #4). I also heard testimony from petitioner’s son.

First, the DDB expressed some doubt relating to the IQ score of 64. I addressed this in the initial decision in this matter. I do not find the questions relating to the score compelling. It is true that petitioner has previously been assessed with higher scores. But, I find the recent assessment at least as valid as prior assessments. It appears from my review of the DDB decision that the DDB’s discounting of this 64 FS IQ score was determinative in their denial.

As for the additional impairment(s), the petitioner argues that the DDB assessments by Dr. [REDACTED] reflect that impairments including anxiety disorder and personality disorder lead to mild or moderate functional limitations in petitioner (see ex. #4). I agree. The assessments indicate limitations in the ability for follow instructions, carry out instructions, and maintain attention, respond appropriately to changes in the work setting, and the ability to “complete a normal workday and workweek without interruptions...from symptoms.”

Given this clarification of the petitioner’s argument, and the additional context provided by petitioner’s son at hearing, I am compelled that the petitioner meets the listed impairment under 12.05(C).

CONCLUSIONS OF LAW

The petitioner is disabled for the purposes of state medical assistance.

THEREFORE, it is

ORDERED

That this matter is remanded to the Department with instructions to find petitioner eligible for MA based on disability. This action must be completed within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 18th day of April, 2014

\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 April 18, 2014.

Outagamie County Department of Human Services
Disability Determination Bureau