



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

In the Matter of

██████████
██████████
██████████

DECISION

MDD/153205

PRELIMINARY RECITALS

Pursuant to a petition filed September 27, 2013, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on February 7, 2014, at Elkhorn, Wisconsin. Hearings set for December 5, 2013 and January 7, 2014 were rescheduled at the petitioner’s request.

The issue for determination is whether petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Petitioner's Representative:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 49-year-old resident of Walworth County. He is not a caretaker of minor children.
2. Petitioner applied for MA on December 20, 2012. By a letter dated September 27, 2013, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration but the DDB again denied disability on October 25, 2013.
3. Petitioner has a high school education. His work history is in manual labor with no work since 2004. He has no technical or other advanced education.

4. Petitioner has degenerative and chronic deterioration in his right ankle, gradually worsening since an accident as a child. He also has mild subchondral sclerosis with joint space narrowing in his right hip. He has sclerosis and spurring in his L3-L4 and L4-L5 spine. These issues cause pain upon movement both in his back and legs. Range of motion in his ankle is limited to 5 degrees dorsiflexion and 10 degrees plantar flexion. He is unable to stand on his toes or heels of his right foot.
5. Due to pain issues petitioner has difficulty climbing stairs. He can drive but only for short distances. He has problems with balance, is unable to squat, and needs a cane to ambulate.
6. Petitioner also has mental issues. He has moderate to marked dysfunction with memory, concentration, and pace.
7. The DDB concluded that petitioner is capable of sedentary work.

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 will not address that finding further because of my conclusions below.

The fourth and fifth steps occur if the impairments do 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 that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that petitioner could not fully perform past work, but could perform other work.

The DDB found that physically petitioner was capable of doing sedentary work, the lowest level possible, citing Rule 201.20 in Appendix 2 at 20 C.F.R., Part 404, Subpart P. Sedentary work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a). A certain amount of walking and standing can be involved in sedentary work. Rule 201.20 provides that an individual under age 50 with limited education and previous work experience with transferable skills who is capable of sedentary work is not disabled.

I believe that Rule 201.20 is not the accurate one. Petitioner has a high school education, and his previous work skills are not transferable. That would place petitioner in Rule 201.21, which still would lead to a finding of not disabled if petitioner were capable of doing sedentary work. I conclude, however, that petitioner is not capable of doing sedentary work.

It is true that petitioner is capable of functioning while sitting. He is able to lift small articles and can do limited walking and standing. However, I find that petitioner's mental incapacity detract from any ability to sustain sedentary work. He graduated from high school 30 years ago and has had no training of any kind since. He is close to moving into the "closely approaching advanced age" category; if he were in that age range his limited work history likely would put him in Rule 201.12 with a finding of disabled. Furthermore, due to his dysfunction with memory, concentration, and pace, it is unlikely that he could maintain a sedentary work activity if he even could grasp it in the first place. I conclude, therefore, that petitioner's mental incapacity takes him outside the simple finding in the Rule 201 grid for sedentary work. I conclude that his impairments leave him unable to perform even sedentary work, and thus he is disabled. The finding is retroactive to three month prior to his application for MA.

CONCLUSIONS OF LAW

Petitioner is disabled because his combination of physical and mental impairments, combined with his limited training, make him incapable of even sedentary work.

THEREFORE, it is

ORDERED

That the matter be remanded to the Walworth County economic support agency with instructions to continue processing petitioner's December 20, 2012 MA application for financial eligibility on the basis that he was disabled with an onset date of September 1, 2012. The county shall do so and inform petitioner of the eligibility determination within 10 days of this decision subject to any necessary delays for verification.

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 February, 2014

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 13, 2014.

Walworth County Department of Human Services
Disability Determination Bureau
cstoffel@co.walworth.wi.us