



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/153369

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 07, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on December 23, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the Department correctly denied Petitioner's application for Medical Assistance – Disability because he is not "disabled" for MA purposes.

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, Room 651  
Madison, Wisconsin 53703

By: No Appearance, submission of medical record

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.
2. Petitioner is 28 ([REDACTED]) years of age. He is not the caregiver of any minors and he has not been adjudicated to be blind or disabled by any federal or state agency under Social Security regulations defining disability. He applied for Medical Assistance – Disability benefits on July 3, 2013. He seeks backdated benefits to May 7, 2013.

3. Petitioner's application noted severe depression with psychosis and anxiety. Since that application schizoaffective disorder has been added as a diagnosis. In a May 7, 2013 psychotic episode Petitioner injured himself with self-inflicted stab wounds with a butcher knife to the abdomen lacerating his liver and puncturing a lung and he also perforated his ear drum by stabbing himself in the ear with a screwdriver. At the time he was having visual and auditory hallucinations and saw writing on the wall that told him to kill himself. To this day he believes this happened as he was possessed by demons. He was subject to a Chapter 51 commitment. He needs assistance with reminders as to activities of daily living, cannot manage money and has some difficulty with social interactions. He is compliant with medications.
4. Petitioner has a Bachelor of Science degree in computer science. He was working as a software developer but lost that employment in September 2011. He is not cognitively impaired.
5. Petitioner has not applied for Social Security Disability Insurance Benefits or Supplemental Security Income benefits.
6. On September 24, 2013, the Disability Determination Bureau (DDB) issued a letter to Petitioner informing him that it had denied his application for MA – Disability finding him “not disabled” under Social Security regulation definition of disability.
7. Petitioner requested reconsideration from the DDB on September 29, 2013. The DDB re-affirmed the finding of “no disability” on or about November 1, 2013.

### **DISCUSSION**

To be eligible for MA as disabled, a person must meet the definition of that term as it is used for SSI purposes. See, WI Stat § 49.47(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 result in death, or 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/her medical condition, and their ability to return to vocationally relevant past work or adapt to new forms of employment are evaluated in that sequence. See 20, C.F.R. § 416.905 and § 416.920.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12 month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 C.F.R. § 416.920.
2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. § 416.920(c).
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 C.F.R. § 416.920(d).

4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. 20 C.F.R. § 416.920(f).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual functional capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 C.F.R. § 416.920(f).

The Bureau conceded that the petitioner meets step one because he was not working, and it has determined that his conditions form a "severe impairment" under the Social Security Regulations. Therefore he also meets step two of the sequence.

The Bureau then reached step three, and concluded that Petitioner's conditions do not meet or equal a "listed impairment" under the Social Security Regulations.

The relevant listing states are found at *20 CFR Ch. III, Appendix 1 to Subpart P of Part 404—Listing of Impairments at §§ 12.03 - Schizophrenic, Paranoid and Other Psychotic Disorders, 12.04 - Affective Disorders and 12.10 – Autism and Other Pervasive Developmental Disorders*. They are too lengthy to reproduce here. After reviewing them and Petitioner's medical records, while it is a close call, I am concluding that Petitioner does not precisely fit into any of the listing categories. In brief, I agree with the DDB in that Petitioner does not have sufficient marked restrictions of activities of daily living, of difficulties in maintaining social functioning, of difficulties in maintaining concentration, persistence, or pace; or repeated episodes of decompensation - each of extended duration.

Turning to step four, the DDB found that he does not have the residual functional capacity to return to his past work. This means he meets step four.

This means that the analysis drops to the fifth and final step, a consideration of the claimant's "residual functional capacity". The DDB conclude that Petitioner is capable of unskilled heavy work.

Generally, this 5<sup>th</sup> step analysis is made by application of a guideline tool known as the Social Security residual functional capacity (RFC) "grids", by a vocational consultant, and an additional tool known as the "Physical Residual Physical Functional Capacity Assessment" performed by the Bureau's Disability Examiner and reviewed and approved by a physician Medical Consultant.

The "grid" is a table considering, age, education, and past work experience. Here the DDB conclude that Petitioner is physically capable of unskilled heavy work under §204:

*204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not

disabled, even though age, education, and skill level of prior work experience may be considered adverse.  
See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at Rule 204.

These listings do not, however, work well where diagnoses such as Petitioner's are involved:

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.  
*20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, §200.00(e).*

After reviewing testimony of Petitioner's mother, the medical records and a letter from a county agency therapist and psychiatrist, both of whom treat Petitioner (see joint letter dated December 11, 2013 from [REDACTED] MS, LPC, SAC and [REDACTED]), I am concluding that, while Petitioner may be physically able to do heavy work, Petitioner's mental impairments preclude employment and that the onset was the date of self-injury in early May 2013.

**CONCLUSIONS OF LAW**

That Petitioner is disabled under MA – Disability and Social Security Administration rules and regulations.

**NOW, THEREFORE, it is ORDERED**

That this matter is remanded to the county agency with instructions to continue processing Petitioner's application for EBD Medicaid. If otherwise eligible, his Medicaid certification shall be backdated to the May 2013 self-injury incident.

**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 Milwaukee,  
Wisconsin, this 24th day of March, 2014

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\sDavid D. Fleming  
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 March 24, 2014.

Waukesha County Health and Human Services  
Disability Determination Bureau