



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MDD/153746

PRELIMINARY RECITALS

Pursuant to a petition filed September 24, 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 January 21, 2014, 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, Room 651
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 based upon a disability on March 21, 2013.
3. The petitioner is 58 years old.
4. The received a GED and attended 1 ½ years of vocational-technical school.
5. The petitioner has worked as a house cleaner, as well as a receptionist and bookkeeper at a ██████
██████████████████.

6. The petitioner is diagnosed with diabetes and COPD. She had a stroke early in March 2013 that left her confused. While hospitalized for the stroke, she developed ventricular tachycardia and remained in the hospital for about a week.
7. On September 27, 2013, she was in a car accident. She entered a hospital on October 10, 2013, and has been there or in a nursing home since. She expects to be released by the end of January 2014. Following her release, she is expected to receive outpatient wound care for foot and toe ulcers twice a week for at least two months.
8. The petitioner has had 1 ½ toes removed and has persistent toe and foot ulcers.
9. The petitioner has “severe diffuse multivessel” heart disease. She is not a candidate for heart surgery because of the “diffuse nature of her diabetic coronary vasculopathy.” *Physician’s notes*, [REDACTED] 8/29/2013.
10. The petitioner remains confused and unable to care for herself.

DISCUSSION

An adult woman under 65 without minor children may receive medical assistance if she is disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). To qualify as disabled, she 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 unable to 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 she 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 applicant works at a job that is considered to be substantial gainful employment, she will be found to be not disabled without further review. If she is not working, the Bureau must determine if she has a “severe impairment.” A severe impairment is one that limits her ability to do basic work activities. 20 C.F.R. § 4 16.921. The petitioner is not working and there is no doubt 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. These listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The petitioner has a number of listed impairments, including cognitive problems as a result of stroke, severe cardiovascular disease, and diabetes. She does not, however, meet the specific criteria for any of the listed impairments.

The fourth and fifth steps occur if the impairment does not meet the listings. The Bureau must determine whether she can perform past jobs. If not, the agency must determine if she can do any other types of work that would be considered substantial gainful activity. 20 C.F.R. § 416.960. A note in the Bureau’s file suggests that she can still sort onions. I disagree. The petitioner a 58-year-old woman who has had a variety of problems that have gotten worse in the last year. Early in March 2013, she had a stroke that continues to cause her confusion. Medical records into October 2013 indicate that she remained confused. On September 27, 2013, she was in a car accident. She entered a hospital on October 10, 2013, and has been there or in a nursing home since. She testified that she expects to be released by the end of January 2014. However, a January 17, 2014, occupational therapy report by [REDACTED] [REDACTED] of [REDACTED] Healthcare expressed doubt that the petitioner could live independently because she “lacks motivation, initiation, and planning skills.” The report added that she cannot “manage her own meals with a proper diet,” clean up her house, or manage her medical needs. As a result, she has foot ulcers that will

not heal. The report noted that none of these problems occurred before her stroke. While hospitalized for her stroke in March 2013, she developed ventricular tachycardia and remained in the hospital for about a week. She has "severe diffuse multivessel" heart disease. She is not a candidate for heart surgery because of the "diffuse nature of her diabetic coronary vasculopathy." *Physician's notes*, [REDACTED] 8/29/2013. This leaves her with little endurance or strength. As a result, she can walk unaided for only a few minutes.

Because the petitioner cannot do past work, it is necessary to determine whether she can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. She is considered to be of advanced age because she is over 55 years old. 20 CFR §416.963(a). She graduated from high school and can read and write the English language, but has no transferable skills. 20 CFR § 404.1565. Because she is of advanced age and has a high school education with no transferable skills, she is disabled if she is limited to light work. See 20 CFR Pt. 404, Subpt. P, App. 2, Rules 202.06 and 203.14, et seq. Light work requires her to lift 20 pounds occasionally and 10 pounds frequently. 20 C.F.R. § 404.1567(b). Because of the petitioner's heart problems, she cannot lift any weight frequently. Furthermore, her physical problems are exacerbated by her continuing mental problems that have arisen since her stroke. These problems have left her unable to work since her stroke. The medical records are unclear concerning the petitioner's prognosis, but there is nothing in those records to suggest that she will be able to work before March 2014. This means that her problems have prevented her from working for a year, meaning she is disabled. Because her condition may improve, the Disability Determination Bureau may review her disability six months after the date of this decision.

CONCLUSIONS OF LAW

The petitioner has been disabled because of multiple health problems since March 1, 2013.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to continue processing the petitioner's application for medical assistance. When doing so it shall assume that she has been disabled since March 1, 2013. The Disability Determination Bureau may review her disability determination six months or later after the date of this decision.

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 28th day of January, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 28, 2014.

Barron County Department of Human Services
Disability Determination Bureau