



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MAP/153792

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 30, 2013, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medicaid Purchase Plan (MAPP) purposes, a hearing was held on February 26, 2014, by telephone. A hearing set for January 23, 2014 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is disabled for MAPP purposes.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Atty. [REDACTED]  
[REDACTED]  
[REDACTED]  
Madison, WI 53703

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 31-year-old resident of Rock County.
2. Petitioner is not the caretaker of a minor child. She has a high school education.
3. Petitioner has a rare congenital blood disorder called thrombotic thrombocytopenic purpura (TTP). The disease, untreated, causes a number of impairments including bruising, fatigue, nausea, jaundice, fever, anemia, and eventually seizure, liver failure, and stroke.
4. The disease is treated with regular infusions of fresh, frozen plasma. With the regular treatment a person is capable of normal activities, and that is the case with petitioner.
5. Petitioner applied for MA on March 22, 2013. By a letter dated August 1, 2013, the DDB determined that petitioner was not disabled. Rather than filing for reconsideration, petitioner

appealed to the Division of Hearings and Appeals. In a decision dated October 10, 2013, the Division found that petitioner essentially requested reconsideration by appealing and sent the file back to the DDB for reconsideration. The DDB affirmed its disability denial on November 27, 2013 and sent the case back to the Division of Hearings and Appeals for a hearing on the merits.

### DISCUSSION

An adult under 65 may receive MA if she is disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). To qualify as disabled, the person must meet the definition of that term as it is used for Supplemental Security Income (SSI) purposes. Wis. Stat. §49.47(4)(a)4. Federal regulations automatically find that anyone engaging in substantial gainful activity is not disabled. However, Wisconsin has an exemption from the federal government that allows those who are disabled but wish to work to receive medical assistance through the MAPP program. Wis. Stat. §49.472; MA Handbook, Appendix, §5.12.1.

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. s. 416.905 and s. 416.920.

The SSI regulations typically 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. However, the MAPP program eliminates that step.

Wis. Stat., §49.472(3)(c) provides as one criterion for MAPP eligibility that an individual "would be eligible for supplemental security income for purposes of receiving medical assistance but for evidence of work, attainment of the substantial gainful activity level, earned income and unearned income in excess of the limit established under 42 USC 1396d (q)(2)(B) and (D)." In other words, she can be considered to be disabled excluding evidence that she is working. The statute does not mention *ability to work* as suggested in petitioner's pre-hearing brief. It mentions actual work. Thus step one of the process, current employment status, is eliminated from the process for determining disability. Steps four and five, discussed below, are not eliminated as suggested by petitioner's brief. This issue was addressed by the Department in Final Fair Hearing decision no. MAP-71/53891, dated December 23, 2002 (the decision can be found on-line, and I have put a copy in this case's file).

The DDB thus moved directly to Step 2, whether the applicant 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 has a severe impairment. The next 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 which are disabling without additional review. 20 C.F.R. 416.925(a). The DDB found that petitioner meets or equals no listing, and petitioner did not argue that she meets a specific listing. The listing concerning TTP, no. 7.06, requires platelet counts repeatedly below 40,000/cubic millimeter with at least one spontaneous hemorrhage within five months prior to adjudication or intracranial bleeding within twelve months prior to adjudication. Petitioner has not had those occurrences. I note that listings must be met even with treatment because SSI rules require the person to follow treatment to be eligible. 20 C.F.R. §404.1530.

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 did not address past work. Instead it essentially found that petitioner is not limited sufficiently to prevent her from working. In fact, if petitioner were limited to the lowest functional capacity, sedentary, she would be found to be not disabled. See Rule 201.25, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. When petitioner is getting her transfusions, she is capable of working, most likely at a functional capacity higher than sedentary, and thus she cannot be found to be disabled.

### **CONCLUSIONS OF LAW**

Petitioner is not disabled under SSI rules as required for MAPP eligibility.

**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 4th day of March, 2014

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\sBrian C. Schneider  
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 4, 2014.

Rock County Department of Social Services  
Division of Health Care Access and Accountability  
Attorney Richard Lavigne