



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/154238

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 4, 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 January 21, 2014, by telephone.

The issue for determination is whether petitioner is disabled.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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 31-year-old resident of Fond du Lac County. He is a high school graduate.
2. Petitioner applied for MA on May 16, 2013. By a letter dated October 24, 2013, the DDB found that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on December 11, 2013.
3. Petitioner was in a motorcycle accident in 2003 that left him with a permanent brain injury. In particular petitioner has difficulty speaking; his speech is slow and labored but can be understood with some effort by the listener. His reasoning and memory are good, but he has problems with impulse control, judgment, and emotional maturity.

4. In April, 2013 petitioner was in a car accident. His left ankle was dislocated and he has developed plantar fasciitis in his feet. He suffers discomfort when walking.
5. The DDB determined that petitioner was capable of doing light level 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 agree. The listings for mental impairments require loss of cognitive functioning leading to marked impairments in daily living and functioning. See Listing 12.02. While petitioner clearly has deficits, they are not at the level to meet the listings. The problems with petitioner's feet also do not rise to a listing level.

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 light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. The DDB cited Rule 202.20, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.20 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The problem for petitioner is that even if he were limited to sedentary work, the lowest level, he still would be found not disabled. 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. A person of petitioner's age and training who is able to do only sedentary work is not disabled. Rule 201.27.

While I have petitioner's testimony of his capabilities, there is no professional evidence in the file that would rebut the DDB finding that petitioner can do light work. The DDB made its finding considering both petitioner's original accident and his most recent accident. Without evidence to contradict the DDB expert's conclusions I have no basis to overturn it.

As I mentioned during the hearing, petitioner should become eligible for MA effective April 1, 2014. At that time all childless adults with yearly income under \$11,700 will be eligible for BadgerCare Plus MA.

### **CONCLUSIONS OF LAW**

Petitioner is not disabled as that term is used for MA purposes pursuant to Wis. Stat., §49.47(4).

**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 28th day of January, 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 January 28, 2014.

Fond Du Lac County Department of Social Services  
Disability Determination Bureau