



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

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In the Matter of

██████████  
██████████  
██████████

DECISION

MDD/154955

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 20, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a telephone hearing was held on February 18, 2014.

The issue for determination is whether the petitioner is disabled.

There appeared at that time 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:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Brown County.
2. The petitioner applied for medical assistance based upon a disability on September 29, 2013.
3. The petitioner is 55 years old.
4. The petitioner received a GED and has not pursued any vocational-technical school coursework.
5. The petitioner has not worked for the past 10 years, and has been homeless for several years.

6. The petitioner is diagnosed with COPD, diverticulitis, Hepatitis C, failing liver, and hearing loss. In July, 2013, petitioner underwent Hartmann's procedure for perforated diverticulitis, and presently utilizes a colostomy bag.
7. Petitioner's psychiatric diagnoses included dysthymia and poly substance abuse, which is in remission. Petitioner's psychiatric diagnoses are not severe.

### DISCUSSION

An adult under age 65 without minor children may receive medical assistance if he is disabled. Wis. Stat. §§ 49.46(1) and 49.47(4). To qualify as disabled, he 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. He is disabled if he is 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 he meets this definition by evaluating in sequence his 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. 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, he will be found to be not disabled without further review. If he is not working, the Bureau must determine if he has a "severe impairment." A severe impairment is one that limits his ability to do basic work activities. 20 C.F.R. § 416.921. The petitioner is not working and there is no doubt he has a severe physical 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, he 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 he can perform past jobs. If not, the agency must determine if he 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 he can still meet the demands of medium activity. I disagree.

The petitioner is a 55-year-old man who has had a variety of problems that continue to impact his day-to-day life. He testified at hearing that, approximately 9 months ago, he underwent diverticulitis surgery that led to the necessity of a colostomy bag. While apparently a candidate to have the ostomy reversed, petitioner's lack of medical coverage has prevented petitioner from undergoing this procedure. He further noted that his COPD and a previous injury to his foot severely limits his physical endurance.

Petitioner corroborated his oral testimony with a letter from [REDACTED], who reports that she has provided primary care to petitioner for the last three years. She writes:

[Petitioner's] physical limitations are a result of his current diagnoses which include chronic hepatitis C, moderate COPD, moderate claudication, and diverticulosis. In addition, he underwent colon resection six months ago after developing diverticulitis and a colonic abscess. He still has a colostomy due to uninsured status.

[Petitioner] has performed unskilled, physical work throughout his years of employment. Taking all of his impairments into consideration, I do not anticipate that he will ever be able to engage in substantial gainful activity again.

Exhibit 1, p. 3.

I find nothing in the record to dispute Ms. ██████'s opinion insofar as it relates to petitioner's ability to perform work similar to positions that he has held in the past. Per the petitioner's testimony, he has not worked in the past 10 years. Because the petitioner cannot do past work, it is necessary to determine whether he can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. Petitioner is considered to be of advanced age because he is over 55 years old. 20 CFR §416.963(a). He obtained his GED, but has no transferable skills. 20 CFR § 404.1565. Because he is of advanced age and has a high school education with no transferable skills, he is disabled if he 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 him to lift 20 pounds occasionally and 10 pounds frequently. 20 C.F.R. § 404.1567(b). Because of the petitioner's COPD, leg/foot issues, and status post- colon resection, I do not find that he can lift any weight frequently. The medical records are unclear concerning the petitioner's prognosis, but there is nothing in those records to suggest that he will be able to work before April, 2014. This means that his problems have prevented him from working for a year, meaning he is disabled. Because his condition may improve, the Disability Determination Bureau may review his disability six months after the date of this decision.

### CONCLUSIONS OF LAW

The petitioner has been disabled because of multiple health problems since at least April 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 he has been disabled since April 1, 2013. The Disability Determination Bureau may review his disability determination six months or later after the date of this decision. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of April, 2014

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\sPeter McCombs  
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 April 10, 2014.

Brown County Human Services  
Disability Determination Bureau