



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/155100

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 16, 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 and the Wisconsin Disability Determination Bureau (DDB or Bureau) in regard to Medical Assistance (MA), a hearing was held on March 4, 2014, by telephone.

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

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Brown County.
2. Petitioner applied for MA on May 13, 2013. By letter dated November 1, 2013, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on January 23, 2014.

3. DDB's basis for determining that the petitioner was not disabled was code N31 – a severe impairment that does not prevent substantial gainful activity in a past occupation.
4. The petitioner was not employed at the time of application.
5. Prior to April 2013, the petitioner had suffered from pancreatitis due to gallbladder sludge. The petitioner was hospitalized from April 2 – 10, 2013, due to pancreatitis, possibly aggravated by alcohol intake. At admission, her lab results showed elevated lipase of 5712. She was treated with IV fluids, but no blood transfusion. She had acute renal failure, which was resolved by discharge. A small pancreatic pseudocyst was also noted. The petitioner was again hospitalized for abdominal pain from May 9 – 16, 2013, followed by a rehabilitation stint in a nursing home. She was given IV fluids during the hospitalization and was on liquid diet (TPN/IV) for a portion of her nursing home recovery. Her pseudocyst had decreased in size at the time of the second hospitalization. An ultrasound taken on July 25, 2013, showed resolving pancreatitis with a small pseudocyst and inflammation of the pancreas. The petitioner is five feet two inches tall, and her weight ranged from 115 to 137 pounds during 2013, with weight increasing in the fall of 2013. BMI for that height and 122 pounds is 22 (normal).

The petitioner also has high blood pressure, which was under adequate control at the time of hearing. She has been diagnosed with depression in the past, but is currently able to adequately perform her self-care tasks. The petitioner also has a recent history of smoking and mild COPD.

6. She uses a cane for walking. The petitioner is limited to 200 feet for walking, but has no limitations with respect to sitting (breaks needed) or communicating. There are no restrictions on the petitioner's ability to grasp or pull objects, and she has no chemical sensitivities. However, she does have difficulty with lifting, ascending stairs, and reaching objects overhead (bad rotator cuff in shoulder).
7. The petitioner's past relevant employment as a bakery packager, [REDACTED]'s worker, and customer service representative at [REDACTED]
8. The petitioner's impairments, in total, constitute a "severe" impairment. She cannot return to employment that involves more than "sedentary" work.
9. The petitioner, age 60 at the time of hearing, has a 12<sup>th</sup> grade education. Her previous employment was in a semi-skilled occupation.
10. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application.

### DISCUSSION

The standards used for determining disability are set forth at 20 C.F.R. §416.901 and 20 C.F.R. 404, Appendix 1. To be found disabled, the petitioner must pass several steps in a prescribed disability evaluation procedure. 20 C.F.R. §416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." She is not; therefore, she passes the first test in the sequential evaluation. The second requirement in the evaluation is that she has a severe impairment expected to last for at least 12 months. A severe impairment is one which significantly limits a person's physical or mental abilities to do basic work activities. I conclude (and the DDB has conceded by using the denial code N31) that the petitioner has a severe digestive impairment.

The third step in the sequential evaluation is the determination as to whether the petitioner's impairments meet or are equivalent to one of the disability listing standards found in Appendix 5. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of her ailments meets

or equals a listed standard. The petitioner's condition does not meet the relevant Listing 5 standard, which pertains to gastro-intestinal disorders:

**5.01 Category of Impairments, Digestive System**

**5.02 *Gastrointestinal hemorrhaging from any cause, requiring blood transfusion*** (with or without hospitalization) of at least 2 units of blood per transfusion, and occurring at least three times during a consecutive 6-month-period. The transfusions must be at least 30 days apart within the 6-month period. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

**5.03** [Reserved]

**5.04** [Reserved]

**5.05 *Chronic liver disease***, with:

**A.** Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, ...

**5.06 *Inflammatory bowel disease*** ...

**5.07 *Short bowel syndrome*** (SBS), due to surgical resection of more than one-half of the small intestine, with dependence on daily parenteral nutrition via a central venous catheter.

**5.08 *Weight loss due to any digestive disorder*** despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

**5.09 *Liver transplantation***. Consider under a disability for one year following the date of transplantation; ...

*Id.*, §5.01 - .09, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.

The petitioner's condition does not meet or equal any of the Listing 5.0 standards above. In particular, there is no evidence that she required 2 units of blood transfused, three times in six months. Also, her weight has not fallen under the 17.5 BMI standard.

In the fourth step of the evaluation process, DDB considers whether an applicant can return to prior employment. If the applicant *can* return to one of her prior jobs, she is not disabled. If the applicant *cannot* return to any of her prior jobs, the analysis moves to the fifth step. The DDB asserts that the petitioner can return to her prior job as a customer service representative (although not necessarily with the same company). The record before me supports a conclusion that the petitioner could be a customer service representative at a company with a less stressful environment. However, if this conclusion is wrong, the petitioner would still fail to be found disabled at the fifth and final step, below.

The fifth step of the evaluation process considers whether the petitioner, when her age, education, job skills and exertional capacity are considered, retains the ability to do *any* work in the economy. In

disability jargon, the petitioner is a person of advanced age, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. She has no communicative limitations. The DDB asserts that the petitioner has the ability to exert herself at the level required for sedentary work. The exertional categories are sedentary, light and medium work. Looking at these limitations, the vocational rule finds the petitioner to be “not disabled.” See Appendix 2, rule 201.07.

The petitioner may wish to consider applying for Wisconsin Medicaid/BadgerCare Plus effective April 1, 2014. The law has changed in Wisconsin, and the petitioner will only need to establish that she is a Wisconsin resident, who does not have other health insurance, and that the adjusted gross income for her household of two is under \$15,730 (100% of the federal poverty level). She may apply at her local county human services department or online at <https://access.wisconsin.gov>.

### **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 is 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 5th day of March, 2014

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\sNancy J. Gagnon  
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 5, 2014.

Brown County Human Services  
Disability Determination Bureau  
[ssamsa@hrserase.com](mailto:ssamsa@hrserase.com)