



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/155331

PRELIMINARY RECITALS

Pursuant to a petition filed September 16, 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 March 18, 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 40-year-old resident of Manitowoc County.
2. Petitioner does not care for a minor child. He has a high school education, and has a history of working in manual labor.
3. Petitioner applied for MA on April 30, 2013. By a letter dated October 10, 2013, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration but the DDB again determined him to be not disabled on February 3, 2014.
4. Petitioner is blind in his right eye, and although he has glaucoma in his left eye his vision in that eye is 20/20. He also gets headaches due to a history of two head injuries in 1999 and 2003; the headaches were reduced with medication. He is alert and oriented with intact memory.

5. The DDB found that petitioner is capable of routine unskilled work with no physical limitations.

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 vision impairments are at nos. 2.02 – 2.04 require vision in both eyes to be 20/200 or worse, or to have a field of vision of 20 degrees or less. Petitioner's vision is not that impaired. For head trauma at listings 11.02, etc., there must be disturbances in communication, gross or fine motor skills, or loss of cognitive function. Petitioner is not at those levels.

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 heavy level work. At that level petitioner cannot be found to be disabled. However, even if petitioner were at the lowest level, sedentary, he 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, found at Appendix 2 at 20 C.F.R., Part 404, Subpart P.

Petitioner may wish to consider re-applying for Wisconsin Medicaid for April onward. From April 1, 2014 forward, a person with income below \$11,170 will not have to prove that she is disabled to qualify for Wisconsin Medicaid. Petitioner can apply online at either <https://access.wisconsin.gov> or www.healthcare.gov. He can also call (800) 318-2596. He can also go to the Manitowoc County Jobs Center to apply in person.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

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 25th day of March, 2014

\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 25, 2014.

Manitowoc County Department of Human Services
Disability Determination Bureau
ssamsa@hrserase.com