



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

In the Matter of

██████████ ██████████
████████████████████
████████████████████

DECISION

MDD/155335

PRELIMINARY RECITALS

Pursuant to a petition filed March 5, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on April 17, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████ ██████████
████████████████████
████████████████████

Petitioner's Representative:

██████████ ██████████
████████████████████
████████████████████

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Eau Claire County.
2. The petitioner's application for medical assistance based upon a disability was most recently denied on February 4, 2014.
3. The petitioner has been diagnosed with depression, chronic low back pain (he received a discectomy and fusion in 2002), polysubstance abuse (alcohol, opiads, and marijuana), obesity, and poorly controlled diabetes.

4. The petitioner is 43 years old. He can read and write the English language. He was in the military for three years and attended [REDACTED] [REDACTED] Technical College.
5. As of April 24, 2013, the petitioner had lost over 100 pounds in the previous year.
6. The petitioner had emergency surgery on his scrotum on February 25, 2013. He had Fournier gangrene and was in critical care for eight days.
7. The petitioner reported on May 7, 2013, that he had no pain, redness, or swelling in the area that had been operated on. He did still have bandages that he had to change regularly and his wound continued to bleed on occasion. On May 10, 2013, he reported some soreness. His wound was healed as of December 2, 2013, and he reported no soreness, redness, or drainage.
8. The petitioner often uses a cane to walk. He has back and shoulder pain.
9. A disability examination performed on December 2, 2013, reported that he had no impairment in flexing and twisting his neck, handling objects, seeing, hearing, speaking, and fine finger movement; a mild impairment in sitting, lifting, carrying, and dressing; and a moderate impairment in standing, squatting, walking, ascending stairs and ladders, traveling, and household chores.

DISCUSSION

The petitioner seeks medical assistance based upon a disability. 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 cannot 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 an applicant 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 person is working 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 she 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 petitioner has not worked in over 10 years. The Bureau conceded that he has a severe impairment.

The Bureau was then required to determine whether he had an impairment that meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are considered disabling without additional review. 20 C.F.R. § 416.925(a). The petitioner has various physical problems and reported has had depression, but there is no evidence that any of these conditions meet any of the listings.

The fourth and fifth steps occur if the impairment does not meet the listings. The Bureau must determine whether the petitioner can perform past jobs. If not, then the agency must determine if he can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. § 416.960. It found that he cannot do past work but could perform other work.

The petitioner is 43 years old, making him a younger individual under the rules. A younger individual who can do even sedentary work is not considered disabled. 20 C.F.R. Pt. 404, Subpt. P. App. 2, Rule 201.23. Sedentary work requires no more than occasionally lifting up to 10 pounds at a time and occasionally being able to walk and stand. The petitioner’s back and other physical problems limit his ability to work or carry on activities, but he can lift at least 20 pounds and move about with the assistance

of a cane. A disability report, which is the only medical evidence in his file pertaining to his back and other skeletal problems, indicates that that he had no impairment in flexing and twisting high school neck, handling objects, seeing, hearing, speaking, and fine finger movement; a mild impairment in sitting, lifting, carrying, and dressing; and a moderate impairment in standing, squatting, walking, ascending stairs and ladders, traveling, and household chores. The petitioner also had surgery on his scrotum in February 2013 for Fournier gangrene. This was a serious problem that left him in critical condition. He had to stay in the hospital for over a week and was incapacitated for several months while healing. However, his medical records indicate that by December 2013, he had no pain, swelling, redness, or other problems associated with the surgery. This means that the surgery did not incapacitate him for at least one year. Based upon this and his ability to move about and lift small amounts of weight, I find that he can do sedentary work and therefore is not disabled.

CONCLUSIONS OF LAW

The petitioner is not disabled because he is a younger individual who can do at least sedentary work.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 29th day of April, 2014

\sMichael D. O'Brien
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 29, 2014.

Eau Claire County Department of Human Services
Disability Determination Bureau
CLindenberg@cardonoutreach.com