



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

In the Matter of

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

DECISION

MDD/155657

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dane County Department of Human Services in regard to Medical Assistance (MA), a telephone hearing was held on April 01, 2014.

The issue for determination is whether 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 Dane County. She is 41 years old (DOB ██████████) who completed the 12th grade.
2. Petitioner has worked most recently as an employee of the ██████████, and her work history includes employment as a ██████████ and she also worked at a ██████████. Her last day of employment was July 27, 2010. She reports that she has been unable to work since.

3. On or about June 18, 2013, petitioner applied for disability through the state MA program. She also applied for federal disability through the Social Security Administration, but that application was denied on reconsideration May 15, 2012; an appeal was filed, but was withdrawn on January 23, 2014.
4. Petitioner indicates that she suffers from antiphospholipid antibody syndrome, depression and stage 3 kidney disease. She testified that she has had one major stroke and several minor strokes, valve replacement surgery, and a blood clot removed from behind her heart. She also noted that she has memory issues.
5. On December 3, 2013, the Disability Determination Bureau (Bureau) concluded petitioner was not disabled as it determined her condition was not severe enough to keep her from working. Petitioner requested reconsideration of that determination.
6. On February 18, 2014, the Bureau again concluded that petitioner's impairment did not prevent her from engaging in substantial gainful activity, as she was capable of performing past work as she performed it and as it is performed in the economy.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner's current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual's basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual's testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

THE FIVE-STEP DISABILITY DETERMINATION PROCESS

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but earning less than \$1,070.00 per month, proceed to Test #2. 20 C.F.R. § 416.920(b)

2. An individual who does not have a “severe impairment” which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Test #3. 20 C.F.R. § 416.920(c)
3. If the individual’s severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual’s severe impairment does not meet or equal a listing, proceed to Test #4. 20 C.F.R. § 416.920(d)
4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Test #5. 20 C.F.R. § 416.920(e)

(Note, if the individual has marginal education (less than 7th grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2)
5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1)

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

PROCESSING OF PETITIONER'S DISABILITY APPLICATION

For Test #1, petitioner is currently not working and therefore passes Test #1.

For Test #2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the Bureau applies the following test:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, the Bureau determined petitioner had a severe impairment. Therefore, petitioner passes Test #2.

For Test #3, it must be determined whether petitioner's impairments meet the durational requirement and meet or equal a "listing." For impairments which are listed in the "Listing of Impairments" in the federal regulations, a person is considered disabled if his or her impairment meets or exceeds the level of severity described in the listing for that specific impairment. 20 C.F.R. § 416.926(a) describes how a listing is found to be met or equaled:

We will decide that your impairment(s) is medically equivalent to a listed impairment in appendix 1 of subpart P of part 404 of this chapter if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment.

If an individual is determined to have more than one impairment, but none of them meets or equals a listed impairment, the symptoms, signs, and laboratory findings of the individual's impairments will be compared with those for closely analogous listed impairments. 20 C.F.R. § 416.926(a)(2). The reason is to determine whether the combination of the impairments is medically equal to any listed impairment.

Petitioner is afflicted with several physical impairments including stage 3 kidney disease and antiphospholipid antibody syndrome. Petitioner asserts she has memory loss and weakness in her right hand due to a prior stroke. She also underwent valve replacement.

In this case, I agree with the Bureau's determination that petitioner's impairments do not meet or equal a specific listing. Therefore, as there has been no equivalency asserted regarding a specific listing as related to one of petitioner's severe impairments, I must conclude a specific listing has not been met, petitioner has not been determined disabled, and Test #3 has been passed.

For Test #4, the Bureau concluded petitioner was not capable of returning to her past work, and, therefore, Test #4 was satisfied.

For Test #5, the Bureau concluded petitioner was capable of performing substantial gainful activity, other than relevant past work, and, therefore, Test #5 was not satisfied. At the time of the reconsideration denial, that conclusion meant petitioner was not disabled.

In reviewing this information, along with the medical and vocational information in petitioner's file, which included residual capacity assessments, I must agree petitioner would be capable of performing substantial gainful employment, with only few, and very minor, limitations. I note that petitioner also testified that she suffers from memory loss, but her residual functional capacity exam identifies conflicting information indicating that petitioner has indicated that she requires no reminders to attend to her medications or her personal cares. The medical records indicate that her depressive symptoms are treated medically; the records do not include any treatment provider's notes of memory deficits.

While the medical records do support the existence of some limitations that may prevent her from returning to the type of work that she was doing at the [REDACTED], her impairments are not severe enough to keep her from working altogether. Accordingly, I must conclude that petitioner is not disabled for MA purposes.

CONCLUSIONS OF LAW

Petitioner is not disabled for MA purposes.

NOW, THEREFORE, it is ORDERED

That the matter herein be and 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 3rd day of June, 2014.

\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 June 3, 2014.

Dane County Department of Human Services
Disability Determination Bureau