



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

In the Matter of

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

DECISION

MAP/155710

PRELIMINARY RECITALS

Pursuant to a petition filed January 07, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Disability Determination Bureau to deny disability for Medicaid Purchase Plan (MAPP) purposes, a telephone hearing was held on March 18, 2014.

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

There appeared at that time 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

Disability Determination Bureau
722 Williamson St.
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Brown County.
2. Petitioner is not the caretaker of a minor child. He has a high school education and college education as well.
3. Petitioner suffered a hemorrhagic stroke in January, 2012.

4. Petitioner applied for MA on or about January 2, 2013. By a letter dated November 19, 2013, the DDB determined that petitioner was not disabled. Petitioner filed for reconsideration, which resulted in the DDB affirming its disability denial on February 19, 2014.

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. 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). § 49.47(4) (a)4., Wis. Stats. 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.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 CFR 416.920.
2. **An individual who does not have a "severe impairment" will not be found to be disabled. 20 CFR 416.920(c). A condition is not severe if it does not significantly limit physical or mental ability to do basic work. 20 CFR 416.921(a).**
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 CFR 416.920(d).
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. 20 CFR 416.920(f).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 CFR 416.920(f).

(Emphasis added).

These tests are sequential. 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. However, Wisconsin has an exemption from the federal government that allows those who are disabled but wish to work to receive medical assistance through the MAPP program. Wis. Stat. §49.472; MA Handbook, Appendix, §5.12.1. As such, the MAPP program eliminates the first step here.

The DDB thus moved directly to Step 2, whether the applicant has a "severe impairment." If it is determined that an applicant for MA does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's condition does not meet the SSA listings an analysis of capability to perform past work must be made. If the individual cannot perform past work a

determination of the residual functioning capacity to perform other work must be made. 20 CFR 416.920(a).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the petitioner's physicians are relevant evidence; however the opinions of the doctors as to whether the petitioner is disabled are not relevant. 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 affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

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, DDB determined the petitioner does not have severe impairment. The evidence in the record at this time supports this conclusion. An individual who does not have a "severe impairment" will not be found to be disabled. 20 CFR 416.920(c). A condition is not severe if it does not significantly limit physical or mental ability to do basic work. 20 CFR 416.921(a). The medical evidence indicates that while petitioner does have certain medical problems, those conditions do not prevent him from basic tasks such as driving a car, cleaning, shopping and other activities of daily living (ADLs). The petitioner does attend to his own self-cares and household chores.

Petitioner's claims of cognitive and memory issues are not corroborated by his medical records. Those records indicate that petitioner has an above-average IQ, and that his concentration, judgment, and cognitive functioning are within normal limits.

The petitioner does not meet any listed impairment found at Appendix 1, Subpart P, Part 404; the listings are impairments which are disabling without additional review. 20 C.F.R. 416.925(a). During the hearing, petitioner was unable to provide any evidence to establish that his medical problems were individually or in totality "severe impairments." Accordingly, based upon the above, I must conclude that the DDB correctly determined that the petitioner at this time is not disabled as that term is used for MA purposes pursuant to § 49.47(4), Wis. Stats.

As a final note, at hearing petitioner referenced that he was also pursuing a disability determination through the federal Social Security Administration. I saw no reference to such an application in petitioner's file, and researched that matter. I learned that there is no record of a federal Social Security disability application filed by petitioner. If petitioner wishes to pursue a Social Security disability determination, he is encouraged to contact his local Social Security office.

CONCLUSIONS OF LAW

The petitioner is not disabled as that term is used for MA purposes pursuant to § 49.47(4), Wis. Stats.

THEREFORE, it is

ORDERED

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 14th day of May, 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 May 14, 2014.

Brown County Human Services
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