



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

DECISION

MDD/157563

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 7, 2014, 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 June 12, 2014, by telephone.

The issue for determination is whether petitioner is disabled.

**PARTIES IN INTEREST:**

Petitioner:

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

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 39-year-old resident of Milwaukee County. He has a tenth grade education and is not currently employed.
2. Petitioner applied for MA on March 25, 2013. By a letter dated January 22, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB again denied disability on May 8, 2014.
3. Petitioner has high blood pressure, an irregular heartbeat, sleep apnea, asthma, and suffers from migraine headaches. He has chronic low back pain. He has a recent history of kidney failure but that condition has been stabilized.

4. The DDB found that petitioner has a severe impairment but that he does not meet the medical listings. It found further that petitioner is capable of sedentary work in the normal economy.

### 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. For example, the listing for heart failure, no. 4.02, requires a chronic problem despite treatment with specific test results to meet the listing along with fatigue, palpitation, dyspnea, or angina discomfort on ordinary physical activity, even if the person is at rest. There is nothing in the record suggesting that petitioner meets those requirements. The listing concerning disorders of the spine, number 1.04, requires severe burning and pain, significant limitation of motion in the spine despite prescribed therapy, and significant motor loss, expected to last at least twelve months. Petitioner does not have documented showings of such extreme symptoms.

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 sedentary level work. 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. The DDB cited Rule 201.24, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.24 provides that a person of petitioner's age and training who is able to do sedentary work is by definition not disabled.

Petitioner testified that he is incapable of even sedentary work. However, a DDB vocational expert found that based upon petitioner's records he is able to do that level of work, and there is no expert evidence contradicting that finding. The DDB notes that the medical evidence does not support petitioner's

claimed limitations, and there is nothing in the record that would lead me to a different conclusion. I must conclude, therefore, that the DDB correctly determined petitioner to be not disabled.

Petitioner may wish to consider re-applying for Wisconsin Medicaid for January onward online at either <https://access.wisconsin.gov> or [www.healthcare.gov](http://www.healthcare.gov). From April 1, 2014 forward, a person with income below \$11,170 will not have to prove that he is disabled to qualify for Wisconsin Medicaid. He can also apply at the Milwaukee County Human Services at 1220 W. Vliet Street.

**CONCLUSIONS OF LAW**

Petitioner is not disabled as required for MA eligibility prior to April 1, 2014.

**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 17th day of June, 2014

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 17, 2014.

Milwaukee Enrollment Services  
Disability Determination Bureau  
[adrian.delarosa@ncogroup.com](mailto:adrian.delarosa@ncogroup.com)