



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

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In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/157960

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau ["DDB"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on June 19, 2014.

The issue for determination is whether petitioner is disabled for purposes of MA.

There appeared at that time via telephone the following persons:

**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:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (59 years old) is a resident of Brown County, Wisconsin.
2. In or around November 2013 petitioner filed a *Medicaid -- Disability Application*.

3. DDB sent petitioner a *Medicaid -- Disability Decision Notice* dated March 14, 2014 informing petitioner that he does not qualify for MA because his condition does not meet the disability requirements of Social Security law and regulations.

4. On April 22, 2014 petitioner filed with DDB a *Medicaid -- Reconsideration Request -- Adult*; thereafter, DDB affirmed its previous decision that petitioner does not qualify for MA because his condition does not meet the disability requirements of Social Security law and regulations.

5. Petitioner is currently self-employed doing lawn care and snow removal; he works about 30 hours per week and makes \$26,000 to \$28,000 per year ( which is an excess of \$1,070 per month); petitioner is not blind.

### DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of *disabled* that is used for Supplemental Security Income ["SSI"] purposes. See, Wis. Stat. § 49.47(4)(a)4. (2011-12). The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I (§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

To be *disabled*, for an adult, means the inability to do any substantial gainful activity (i.e., the inability to work) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. See, 20 C.F.R. § 416.905(a) (2013). Unless the impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. See, 20 C.F.R. § 416.909 (2013).

To determine if a person is disabled, a 5 Step prescribed sequential evaluation procedure is used. See, 20 CFR § 416.920 (2013). If a person can be found to be disabled or not disabled at any point in the prescribed sequential evaluation procedure the prescribed sequential evaluation procedure is terminated and no further evaluation is made. See, 20 C.F.R. § 416.920(a)(4) (2013).

The 5 Step prescribed sequential evaluation procedure is as follows.

#### (1) Current Work

The first step in the prescribed sequential evaluation procedure is to determine whether the person is currently working and, if so, if the work the person is doing is substantial gainful activity. For an adult to be disabled they must be unable to do any substantial gainful activity which exists in the national economy. See, 20 C.F.R. § 416.905(a) (2013). If a person is working and the work he or she is doing is *Substantial Gainful Activity*, that person will be found not disabled regardless of his or her medical condition or his or her age, education, and work experience. see, 20 C.F.R. § 416.920(b) (2013).

A *Substantial Gainful Activity* ["SGA"] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. See, 20 C.F.R. §§ 416.910 & 416.972 (2013).

Petitioner is currently working. It is generally considered that the earnings from a person's work as an employee will show that the person has engaged in SGA if the earnings average more than \$1,070.00 per month in calendar year 2014. Social Security Administration ["SSA"] *Program Operations Manual System* ["POMS"] DI 10501.015.B & DI 24001.025.B.2.; See also, 20 C.F.R. § 416.974(b)(2)(ii) (2013). When calculating earnings the value of any subsidized earnings and the value of any impairment-related work expenses (such as attendant care services, medical devices, prosthetic devices, special work-related equipment, drugs, etc.) are subtracted from gross income. 20 C.F.R. §§ 416.974(b)(1) & 416.976 (2013). There is no evidence that petitioner has any subsidized earnings or impairment-related work expenses that would bring his earnings down below \$1,070 per month.<sup>1</sup> Petitioner earns, on average, more than \$1,070.00 a month from his self-employment. Therefore, petitioner is not disabled for purposes of MA.

It is not necessary to consider the remaining 4 steps in the 5 Step prescribed sequential evaluation procedure. See, 20 C.F.R. § 416.920(a)(4) (2013).

Since petitioner is self-employed he may wish to apply for MA under the Medicaid Purchase Plan ["MAPP"].

### **CONCLUSIONS OF LAW**

Petitioner is not disabled for purposes of MA because he is currently working at a *Substantial Gainful Activity* ["SGA"].

**NOW, 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.

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<sup>1</sup> Petitioner testified that he has been told by his doctor not to lift more than 10 pounds and, consequently, is only able to do his self-employment with the help of others. There is no evidence of how much, if anything, these other persons are paid. Further, payments for work-related attendant care expenses can be deducted only if they are for work-related functions (such as reading, communicating). 20 C.F.R. § 416.976(c)(1)(i) (2013). There is no evidence of what-related functions, if any, these other persons perform.

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 23rd day of June, 2014

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\sSean P. Maloney  
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 23, 2014.

Brown County Human Services  
Disability Determination Bureau  
[CDain@hrserase.com](mailto:CDain@hrserase.com)