



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION

MDD/158525

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 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 July 9, 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 31-year-old resident of Brown County. He has a high school education and a work history in tech support.
2. Petitioner applied for MA on February 17, 2014. By a letter dated May 21, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on June 19, 2014.
3. Petitioner has tricuspid pulmonary atresia that currently is monitored with a pacemaker. He is subject to passing out from atrial flutter, the most recent episode of which was in January, 2014. He has trouble breathing in moderate activity.
4. The DDB found that petitioner was capable of sedentary work.

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. 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. The DDB looked extensively at petitioner's medical lab results and other tests and found that he did not meet a listing, and I can find nothing in the record suggesting that petitioner meets those requirements.

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. The DDB cited Rule 201.28, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 201.28 provides that a person of petitioner's age and training who is able to do sedentary work is by definition not disabled.

Petitioner is able to do at least sedentary work. His main problem is irregular and infrequent atrial flutter, and the infrequency would not render him to be unable to work at a sedentary level job. I note that petitioner stated he would have great difficulty obtaining a job with his history, but the standard is not whether an employer would hire him. The standard is whether he is capable of doing the work required for a sedentary level job.

I note that as of April 1, 2014, petitioner now is eligible for MA under the state's new BadgerCare Plus MA eligibility rules.

CONCLUSIONS OF LAW

The DDB correctly found petitioner to be 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 15th day of July, 2014

\sBrian C. Schneider
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 July 15, 2014.

Brown County Human Services
Disability Determination Bureau
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