



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MDD/158748

PRELIMINARY RECITALS

Pursuant to a petition filed February 28, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on August 11, 2014.

The issue for determination is whether petitioner is eligible for MA as a disabled individual.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

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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 Sauk County.
2. Petitioner applied for MA on or about September 17, 2013. By a letter dated February 12, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed its determination on June 26, 2014.

3. Petitioner suffers from chronic pain related to a motorcycle accident, as well as alcoholism, anxiety and depression.
4. Petitioner is presently incarcerated and will be sentenced soon regarding his seventh drunk driving conviction on July 16, 2014.

DISCUSSION

To be eligible for MA, an adult female under age 65 must be disabled, blind, pregnant, 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 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). I note that, even if the petitioner meets a mental health listing, that cannot be a basis for a finding of disability where alcoholism is a contributing factor. See 42 U.S.C. 423(d)(2)(C). Instead the DDB must review petitioner's disability status without regard for his alcoholism. 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 ordered a physical exam, but no results were obtained since the Sauk County Jail, where petitioner was housed, did not have providers who could perform the exam. The matter was denied due to insufficient evidence on file.

Wisconsin law is clear that those incarcerated are not eligible for medical assistance. Section 49.47(6)(c), Stats. states, "Benefits shall not include any payment with respect to: ... 3. Care or services for an individual who is an inmate of public institution, except as a patient in a medical institution or a resident in an intermediate care facility." The administrative code states that a "person detained by legal process" is ineligible for medical assistance. §DHS103.03(7), Wis. Admin. Code. This includes those "incarcerated because of law violation or alleged law violation" whether the violation is a misdemeanor or a felony." *Id.* Because the petitioner is incarcerated he is ineligible for medical assistance even if he could establish that he is disabled. If the petitioner still believes that he is disabled when he is no longer incarcerated he can reapply for medical assistance.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility.

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 10th day of September, 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 September 10, 2014.

Sauk County Department of Human Services
Disability Determination Bureau