



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION

MDD/160353

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 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 October 16, 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 56-year-old resident of Waupaca County.
2. Petitioner applied for MA on January 23, 2014. By a letter dated July 9, 2014, the DDB concluded that petitioner was not disabled. Petitioner sought reconsideration, but the DDB again denied disability on August 28, 2014.
3. Petitioner has a college education and a work history that includes light job activities.
4. Petitioner's primary health problem is with his heart; in December, 2013 he was found to have just 25% of his heart function. He has high blood pressure and sleep apnea. He has lower back and knee problems as well.

5. Petitioner went to an independent medical examination in June, 2014. Medical imaging found no acute abnormality in his back or knee. It was determined that petitioner could lift 20-30 pounds and could stand 30-60 minutes. No sleep apnea test was ordered but apnea was listed as likely contributing to hypertension.
6. The DDB determined that petitioner could do light level work, and that he could work at a light level job he held in the past.
7. Petitioner now is eligible for MA under the new BadgerCare Plus (BC+) law that became effective April 1, 2014.

DISCUSSION

Prior to April 1, 2014, to be eligible for MA, an adult male under age 65 had to 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. There is nothing in the record suggesting that petitioner meets those requirements. Listings for back and knee pain require anatomical deformity or virtual loss of function. See Listings at 1.01. Petitioner does not have severe enough function loss with his knee and back problems.

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 perform past work (such as a foreign material inspector), and with that determination he had to be found to be not disabled. 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 C.F.R. §416.920(f).

The basis for the finding was that petitioner could do light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. Petitioner disagrees with the conclusion that he can do light work, but all of the evidence in the file supports that conclusion. The independent doctor found that petitioner could lift 20-30 pounds based

upon petitioner's own statements. The Residual Functional Capacity Assessment filled out by a DDB expert concluded that petitioner could do light work. There is no professional opinion in the file indicating otherwise.

Petitioner complains that no sleep apnea test is in the file, but sleep apnea is not necessarily a medical impairment but a symptom of a medical impairment. It is not sleep apnea itself but the effects of the sleep apnea that could cause a finding of disabled, and there is little evidence that the sleep apnea affects petitioner's functioning enough to find him unable to do light work. Finally, petitioner complains that the disability specialist asked him to send a time limit waiver because more information was necessary, but then disposed of the file before the waiver was received. I cannot tell why the specialist took the action except that she might not have realized that the independent medical exam was in the file (I had to search for it as it was out of chronological order in the file).

As noted during the hearing, petitioner now has full MA under the BC+ program. If he wants to apply for social security he might be helped by updated medical reports that he now can obtain through the MA program.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for the MA program based upon the medical record in the file.

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 21st day of October, 2014

\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
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 21, 2014.

Waupaca County Department of Social Services
Disability Determination Bureau