



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MDD/160551

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services in regard to Medical Assistance, a telephone hearing was held on November 04, 2014.

The issue for determination is whether petitioner is disabled.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

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 73 year old resident of La Crosse County.
2. Petitioner applied for MA on February 25, 2014. By a letter dated August 1, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the determination on September 5, 2014.
3. Petitioner has hypertension, arthritis, particularly in the hips, osteoporosis, vertigo, and a history of cardiac issues (pacemaker controlled) and sleep apnea (previously CPAP controlled).

4. The DDB found that petitioner is capable of lifting/carrying up to 10 pounds frequently and 20 pounds occasionally. It further noted that petitioner can stand at least 2 hours in an 8-hour workday, and sit about 6 hours in an 8-hour work day.
5. Petitioner is independent in her Activities of Daily Living and Instrumental Activities of Daily Living.

DISCUSSION

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 her medical condition, and her 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, she is found to be not disabled without further review. If she is not working, the DDB must determine if she 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 she 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. Similarly, the listings for dysfunction to the joints, nos. 1.01 etc., require the inability to do fine and/or gross motor movement, or an inability to ambulate. Petitioner is not at that extreme level that would meet the listings.

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 relevant past work.

The DDB found that found that petitioner is capable of lifting/carrying up to 10 pounds frequently and 20 pounds occasionally. It further noted that petitioner can stand at least 2 hours in an 8-hour workday, and sit about 6 hours in an 8-hour work day. Petitioner is independent in her Activities of Daily Living and Instrumental Activities of Daily Living. While I found her testimony credible regarding her pain and endurance limitations, that same testimony corroborates the respondent's determination that petitioner can perform past work. Petitioner presented herself as able to attend to her basic needs independently, and noted that, while she had taken a fall the week prior to hearing, she considered that a fluke, and noted that she does not have a history of falls.

Furthermore, and notwithstanding the foregoing, the medical evidence also demonstrates that physically petitioner is capable of doing sedentary level work. Sedentary level work involves lifting no more than ten pounds with frequent lifting of small articles. 20 C.F.R. §416.967(a).

Although I can understand that petitioner is in need of some sort of medical insurance assistance, I cannot find that she is disabled. She noted that she has not applied for federal Social Security disability benefits, and this ALJ suggested that she may wish to pursue that avenue in the future.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility under Wis. Stat., §49.47.

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 8th day of December, 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 December 8, 2014.

La Crosse County Department of Human Services
Disability Determination Bureau