FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MDD/161615

PRELIMINARY RECITALS

Pursuant to a petition filed October 13, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Adams County Health and Human Services in regard to Medical Assistance, a hearing was held on December 03, 2014, at Friendship, Wisconsin.

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

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Adams County.
2. Petitioner is 49 years old.
3. Petitioner is a H.S. graduate and has completed some college.
4. Petitioner has worked in social work, as a nurse aide, and as a receptionist.
5. Petitioner states she has not worked since 2001.

6. Petitioner claims pain in knee, wrist and body from fibromyaligia. Petitioner claims stomach and back pain.

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 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). Petitioner does not meet this test.

The fourth and fifth steps occur if the impairments do not meet the listings, which they do not in this case. 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 found that physically petitioner was capable of doing 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. Rule 202.20-21 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

The problem for petitioner is that even if she were limited to sedentary work, the lowest level, she still would be found not disabled. 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. But, it would likely be a job that involved mostly sitting and minimal activity. A person of petitioner's age and training who is able to do only sedentary work is not disabled. Rule 201.21. Based on the written record and the testimony at the hearing, petitioner can do at least sedentary work and possibly light level work.

CONCLUSIONS OF LAW

Petitioner is not disabled for purposes of state medical assistance eligibility.

THEREFORE, it is **ORDERED**

That this appeal is 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 16th day of December, 2014

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\sJohn P. Tedesco
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 December 16, 2014.

Adams County Health and Human Services
Disability Determination Bureau