



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/160991

PRELIMINARY RECITALS

Pursuant to a petition filed September 25, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Walworth County Department of Human Services in regard to Medical Assistance, a hearing was held on March 25, 2015, at Elkhorn, Wisconsin.

The issue for determination is whether the Department correctly denied Petitioner's application for Medical Assistance – Disability because he is not "disabled" for MA purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No Appearance but submission of medical file

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Walworth County.
2. Petitioner applied for Medical Assistance – Disability benefits on or about March 25, 2014.
3. Petitioner is 22 years of age ([REDACTED]). He received SSI when he was younger but his father passed and the SSI converted to surviving child benefits. Those benefits were discontinued at age 18. He has reapplied for SSI as an adult but that application was denied in 2011 or 2012.
4. Petitioner's application notes mental illness as his disability. Records obtained as part of the application processing indicate diagnoses of depression and anxiety. He is a high school graduate. He has no work history. He has a driver's license but is too afraid to drive. He does not leave the home other than for medical appointments and his mother takes him to those. As an example - his

mother drives him and checks in for him while he sits in the car until his name is called and she then calls him on a cell phone to come in and he goes directly to the exam room. He stays in his room most of the time and plays video games or watches TV. He has one friend who visits about once a month. He has hygiene issues without reminders from his mother. His medications include Zyprexa, lithium, Lamictal and fluoxetine (generic Prozac).

5. The Disability Determination Bureau (DDB or Bureau herein) issued a letter to Petitioner informing him that it had denied his application for MA – Disability finding him “not disabled” under Social Security regulation definition of disability. Petitioner requested reconsideration from the DDB and the DDB re-affirmed the finding of “no disability”.

DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of that term as it is used for SSI purposes. See, WI Stat § 49.47(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 result in death, or 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/her medical condition, and their ability to return to vocationally relevant past work or adapt to new forms of employment are evaluated in that sequence. See 20, C.F.R. § 416.905 and § 416.920.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12 month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. 20 C.F.R. § 416.920.
2. An individual who does not have a "severe impairment" will not be found to be disabled. 20 C.F.R. § 416.920(c).
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) 20 C.F.R. § 416.920(d).
4. 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).
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual functional capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. 20 C.F.R. § 416.920(f).

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence. If a person's

condition does not meet the SSA listings an analysis of capability to perform past work must be made. If the individual cannot perform past work a determination of the residual functioning capacity to perform other work must be made. *20 CFR 416.920(a)*.

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence; however the opinions of the doctors as to whether the Petitioner is disabled are not relevant. The definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment.

Here the Petitioner is not currently working. The DDB file is silent as to whether Petitioner has a severe impairment. I conclude that it is, however, severe as his conditions do significantly limit his ability to do basic work. See *20 CFR §404.1521*.

The next question is whether any of the Petitioner's conditions meet the Listings. The listings that seem to be most relevant here are found at 20 CFR Ch. III, Appendix 1 to Subpart P of Part 404—Listing of Impairments at §§12.04 - Affective Disorders and 12.06 – Anxiety Related Disorders. While quite lengthy I include them here as they show what demonstrates disability:

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activities [sic]; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

- b. Pressure of speech; or
- c. Flight of ideas; or
- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractability; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

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12.06 *Anxiety Related Disorders*: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

After reviewing the above, Petitioner's medical records and the testimony at the hearing and while it is a close call, I am concluding that Petitioner does meet the listing at §12.04; specifically, I conclude that he meets the requirements of subsection 'C'. He has a documented history of more than 2 years duration with signs and symptoms somewhat reduced by medications and home support but has more than a year of inability to function outside of the structured environment created in the home by his family and there is no indication at this time that that arrangement can be discontinued or even modified without additional treatment. The home is included as a structured environment per 20 CFR Pt 404, Listing 12.00, F. Petitioner participated in a July 29, 2014 consultative exam which concluded that Petitioner would have significant difficulty in being able to work until his symptoms are better treated and suggests that counseling be included along with his psychiatric treatment. While the DDB did not find the exam to be persuasive, I think this conclusion was correct.

Having decided that Petitioner meets the Listing, there is no need to analyze steps 4 and 5.

This case has an unusual wrinkle. Petitioner is currently eligible for BadgerCare+ Medicaid. Nonetheless, Petitioner wanted a decision here as to disability. The agency may want to inquire of Petitioner whether or not he wishes to switch to disability based Medicaid.

Finally, I also note that a State Medicaid disability finding does not include a monetary award as would a Social Security Administration conclusion that Petitioner is SSI eligible. If Petitioner were to apply for SSI this decision is in no way precedent; rather, the State must follow whatever decision is made by the Social Security Administration.

CONCLUSIONS OF LAW

That Petitioner is disabled at this time under MA – Disability and Social Security Administration rules and regulations.

NOW, THEREFORE, it is ORDERED

That this matter is remanded to the county agency with instructions to continue processing Petitioner’s application for EBD Medicaid but may wish to first ask Petitioner if he wants the agency to do so.

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 Milwaukee,
Wisconsin, this 1st day of April, 2015

\sDavid D. Fleming
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 April 1, 2015.

Walworth County Department of Human Services
Disability Determination Bureau