



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

Redact

MDD/161094

PRELIMINARY RECITALS

Pursuant to a petition filed September 15, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services in regard to Medical Assistance, a telephonic hearing was held on December 09, 2014, at Green Bay, Wisconsin. At the request of petitioner, hearings set for November 4, 2014 and November 19, 2014 were rescheduled regarding the August 28, 2014 denial of petitioner's April 29, 2014 disability application for Medical Assistance (MA).

During that rescheduled hearing, petitioner and *Rec Redact* (HRS Erase eligibility specialist) appeared and testified. In addition, during that hearing, petitioner requested that the record be held open for the submission of new medical evidence to DHA in addition to the earlier submission to the Division of Hearings and Appeals (DHA) of December 8, 2014 by HRS Erase eligibility specialist, *Rec Redact*. Ms. *Redact* requested that the new medical evidence be submitted to the Disability Determination Bureau (DDB) for a reconsideration decision, and for DDB to revise and update its Case Development Worksheet based upon the new evidence, and permit a written response by petitioner.

This ALJ sent to Ms. *Redact* at the Disability Determination Bureau a copy of petitioner's December 23, 2014 and December 8, 2014 submissions of medical evidence to DHA. In that same letter, this ALJ requested that Ms. *Redact* (or another DDB analyst) review the enclosed copies of petitioner's submissions to DHA, and submit a detailed, updated Case Development Worksheet to me regarding petitioner's disability and possible onset date to the Division of Hearings and Appeals (DHA). Ms. *Redact* requested and was granted a 10 day period to submit to DHA any respond to DDB's reconsideration summary (updated case development worksheet), if she wished.

This ALJ sent a March 23, 2015 letter to Ms. *Redact* and Ms. *Redact* indicating that DDB completed its updated Case development Worksheet, but it appeared that DDB did not send a copy of that update to Ms. *Redact*, as petitioner's representative. That letter included a copy of that updated Case Development Worksheet, and provided the opportunity for Ms. *Redact* to submit to DHA any written response to that update. Ms. *Redact* did not submit any response to DHA even by the date of this decision.

The issue for determination is whether the petitioner is "disabled" for Medicaid (MA) eligibility purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact
Redact
Redact

Petitioner's Representative:

Re: Redact, eligibility specialist
HRS Erase
2670 S Ashland Avenue, Suite 202
Green Bay, WI 54304

Respondent:

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

By: No Appearance by any DDB representative, only written submissions

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 59 year old resident of Brown County who resides with her daughter and granddaughter.
2. The petitioner is about 5 foot 2 inches tall, and about 185 pounds.
3. The petitioner's prior Social Security Title 2 disability claim was denied on February 29, 2012 and again on September 13, 2013.
4. Petitioner's prior MA disability claim was filed on October 1, 2013, and was denied on March 3, 2014. The medical allegations for that claim were bipolar, panic attacks, anxiety and depression.
5. The petitioner has some physical limitations which are pain related.
6. In the past, petitioner was tentatively diagnosed with bipolar, ADHD, cervical cancer in 1985, hypertension, and alcoholism. She generally takes the following medications: Adderall, Risperdal, and Klonopin.
7. The petitioner has the following work history: cook until 2010 as *Redact* at *Redact*, *Redact*, gym trainer, bank teller at *Redact*, credit counselor at *Redact*, and office manager at *Redact*. The petitioner also worked at the *Redact* and *Redact*.
8. Petitioner applied for MA disability benefits on or about April 29, 2014. She alleged the following medical conditions: bipolar, panic attacks, anxiety and depression. She has a past history of alcoholism.
9. In her February 4, 2014 consultative exam (CE), psychologist, *Redact* PhD diagnosed petitioner with mood and anxiety disorder and ADHD. There is no documentation of manic episodes or documented hypomanic behavior. The primary mental impairment is mood disorder NOS (not otherwise specified) and the secondary is anxiety disorder NOS.

10. During her October 24, 2014 appointment with Psychiatrist, Dr. Red..., petitioner denied racing thought, hallucinations, or suicidal ideas. Her memory is adequate, and her language expression and comprehension are adequate.
11. The petitioner has the following alleged exertional limitations: she is able to lift less than 10 pounds, walk and stand at least two hours per day.
12. The petitioner has a GED degree, and was not placed in any special education classes.
13. The petitioner is able to understand, recall, and carry out three step directions.
14. Based upon petitioner's limitations and medical problems, DDB determined that petitioner has a residual functional capacity (RFC) to perform other light, unskilled work (that does not involve much contact with other people) per Vocational Rule 204.0.
15. The Disability Determination Bureau (DDB) sent an August 28, 2014, notice to the petitioner stating that she was determined not disabled because her medical conditions were not severe enough to prevent her from working at a light, unskilled job. Petitioner sought reconsideration, but DDB affirmed its denial decision.

DISCUSSION

To be eligible for MA, an adult 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 (SGA) 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/her medical condition, and his/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, he 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 was not working, and 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's medical conditions do not meet or equal any listing. I agree. While petitioner clearly has some medical problems, they are not at the level to 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 other than past work. DDB also determined that petitioner could perform light, unskilled work that does not involve much contact with other people.

The DDB reviewed petitioner's medical and physical functional capacity reports. The DDB reviewer found that petitioner is capable of light, unskilled employment. During the hearing and while the record was held open, petitioner alleged several medical conditions to support her allegation that she met the

requirements to be found “disabled” for MA eligibility purposes. See above Preliminary Recitals. Petitioner does have medical and psychological problems, but they are not so severe as to prevent her from participating in a light, unskilled job that does not involve much contact with other people. Accordingly, based upon the above, I conclude that the Disability Determination Bureau correctly determined that petitioner is not disabled at this time for MA eligibility purposes.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for purposes of MA eligibility.

THEREFORE, it is ORDERED

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 26th day of May, 2015

\sGary M. Wolkstein
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 May 26, 2015.

Brown County Human Services
Disability Determination Bureau

Redact@hrserase.com