



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/161734

PRELIMINARY RECITALS

Pursuant to a petition filed October 22, 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 03, 2014, at Green Bay, Wisconsin. The petitioner signed a Waiver of the time limit to issue the disability decision in this MA appeal.

The issue for determination is whether the petitioner is “disabled” for MA eligibility purposes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 47 year old resident of Brown County who resides with his wife.
2. The petitioner weighs about 213 pounds and is 5 feet 9 inches tall.
3. The petitioner suffered a heart attack on December 17, 2013.

4. The petitioner is diagnosed with cardiomyopathy, ventricular fibrillation, HTN, cervical spine fusion, depression, anxiety, past heart attack in December, 2013, and chronic vertigo which occurs with positional changes.
5. The petitioner's last full time employment was during 2013 doing automotive repairs for his own business.
6. Petitioner applied for MA disability benefits on or about March 28, 2014. He is somewhat limited in regard to pain and his other medical problems, but retains the ability to perform light, unskilled work which has no climbing or height requirements due to his vertigo.
7. The petitioner is physically capable of mowing his lawn, shoveling snow, doing laundry, meal preparation, vacuuming, and driving his car. He is also mentally able to independently handle his own finances.
8. The petitioner has the following exertional limitations: he is able to lift about 30 pounds, walk about 500 yards, stand for about one hour, and sit for about 2 hours at a time.
9. The petitioner has 12+ years of school, and was not in special education classes.
10. The petitioner is able to understand, recall, and carry out three step directions.
11. Based upon petitioner's limitations and medical problems, DDB determined that petitioner has a residual functional capacity (RFC) to perform other light, unskilled work (with no climbing of ladders or ropes due to his vertigo) per Vocational Rule 202.20.
12. The Disability Determination Bureau (DDB) sent a September 12, 2014 notice to the petitioner stating that he was determined not disabled because his medical conditions were not severe enough to prevent him 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 he 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 with no climbing or height requirements due to his vertigo.

The DDB reviewed petitioner's medical and physical functional capacity reports. The DDB reviewer found that petitioner is capable of medium, unskilled employment. During the hearing, petitioner explained that after his heart attack he has lost some stamina and is slower physically. He explained that he needs to rest periodically. Petitioner does have medical problems, but they are not so severe as to prevent him from participating in a light, unskilled job. 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 16th day of February, 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 February 16, 2015.

Brown County Human Services
Disability Determination Bureau