



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/161738

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 Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on November 26, 2014, at Sheboygan, Wisconsin.

The issue for determination is whether Petitioner the Department correctly determined that the petitioner is “not disabled” for MA – Disability 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

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County. Petitioner is married. Petitioner’s husband works as a manager at a local moving company.
2. Petitioner is 54 years old. Petitioner will turn 55 on June 6, 2015. She has not been adjudicated by any governmental agency to be blind or disabled under the Social Security regulations.
3. Petitioner does not have a high school degree or equivalency. The last grade she completed was 9th grade. She last worked full-time on a date unknown in 2010, at the [REDACTED]. She

worked in their factory as a forklift operator. She presently works as needed for a moving company. Petitioner reports that her total income from January through November 2014 was \$1,013.75.

4. Petitioner has COPD, stage 3. She has had exacerbations on May 30, 2013, October 8, 2013, and October 3, 2014. She does not need supplemental oxygen. Petitioner is 62" tall, and weighs 140 pounds. Petitioner's FVC is 2.62. Her FEV1 is 1.57.
5. Petitioner filed an application for Medical Assistance – Disability benefits on April 8, 2014.
6. The Department's Disability Determination Bureau denied Petitioner's application for MA – Disability on September 12, 2014, finding her "not disabled". Petitioner requested reconsideration, and the DDB reaffirmed the denial of disability.
7. Petitioner has not, to-date, applied for Social Security disability benefits. Petitioner stated that she was waiting to take her social security. She did not seem to understand the social security disability system, and was mainly concerned with health insurance coverage. She did not qualify for BadgerCare because of her husband's income. The county agency had helped her to apply for State MA after she was denied BadgerCare.
8. On October 22, 2014, the DDB's medical consultant, Pat Chan, M.D., found as follows:

Claimant is a 54 years old and alleges COPD, Stage 3. She is a packer for a moving company, but that's not substantially gainful activity. She is a smoker, but is cutting down. She does not supplemental Oxygen. She has had a number of exacerbations. During an exacerbation on May 30, 2013 her FVC was 60%, FEVI 56%, Spo2 97%. At her follow-up on June 5, 2013 FVC 59%; FEV1 56%. She also has hypothyroidism that is controlled with medication.
9. Petitioner is not engaged in substantial gainful activity. Since 2013 Petitioner has not performed substantial gainful activity. Petitioner works as needed at a moving company packing boxes, but only earned \$1,013.75 from January through November 2014.
10. Petitioner has a severe impairment of COPD.
11. Petitioner's COPD does not meet or equal any applicable listing. On August 26, 2014 Petitioner completed a pulmonary function test. Her FEV1 value was 1.54. Petitioner is only 62" tall, and therefore does meet or equal listing 3.02.
12. Petitioner has the residual functional capacity to perform light work with no concentrated exposure to pulmonary irritants.
13. Petitioner cannot perform past relevant work.
14. Petitioner is disabled effective December 6, 2014 under a non-mechanical operation of grid rule 202.01.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner's current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, 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 an impairment exists, that it is severe, that it affects an individual's basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual's testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

THE FIVE-STEP DISABILITY DETERMINATION PROCESS

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will be found to be not disabled regardless of medical findings. However, if an individual is not working, or is working but earning less than \$860 per month, proceed to Step 2. 20 C.F.R. § 416.920(b).
2. An individual who does not have a "severe impairment" which significantly limits his or her ability to work will be found not disabled. However, if an individual is found to have a severe impairment, proceed to Step 3. 20 C.F.R. § 416.920(c).
3. If the individual's severe impairment meets or equals a listing in 20 C.F.R. § 404, subpart P, Appendix 1, that individual will be determined disabled. However, if the individual's severe impairment does not meet or equal a listing, proceed to Step 4. 20 C.F.R. § 416.920(d).
4. If the individual is capable (has the Residual Functional Capacity) to perform past work, the individual will be determined not disabled. However, if the individual does not have the capacity to perform past work, proceed to Step 5. 20 C.F.R. § 416.920(e).

(Note, if the individual has marginal education (less than 7th grade) and work experience of 35 or more years of unskilled arduous physical labor and can no longer perform past work at a customary exertional level, he or she will be determined disabled under 20 C.F.R. § 416.962) 20 C.F.R. § 416.920(f)(2).

5. If the individual is capable of performing any substantial gainful activity in the national economy, that individual will be determined not disabled. However, if the individual cannot perform any substantial gainful activity in the national economy, that individual will be determined disabled. 20 C.F.R. § 416.920(f)(1).

If it is determined that an applicant for MA is not disabled at the second step in the review, it is not necessary to review the case under any later test or tests. 20 C.F.R. §404.1521.

In addition, where an individual has an impairment or combination of impairments resulting in *both* (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. As explained by the Code of Federal Regulations:

When we assess your *physical* abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis . . . When we assess your *mental* abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

PROCESSING OF PETITIONER'S DISABILITY APPLICATION

For Step 1, Petitioner is not working and meets this step.

For Step 2, in determining whether a disability is “severe” under 20 C.F.R. § 416.920(c), the Bureau applies the following test:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education and work experience.

In this particular case, the Bureau determined Petitioner had a severe impairment, COPD, and that she met Step 2, meaning the analysis continued to Step 3.

Under Step 3, Petitioner’s conditions do not meet or equal any listed impairment. Although Petitioner has COPD, on August 26, 2014 Petitioner completed a pulmonary function test where her FEV1 value was 1.54. Petitioner is only 62” tall, and therefore does not meet or equal listing 3.02. I note that were Petitioner taller, she would meet or equal listing 3.02.

I find that Petitioner is capable of performing light work with no concentrated exposure to pulmonary irritants. This finding is consistent with Dr. Chan’s opinion, Petitioner’s testimony, and the medical evidence. Petitioner has COPD. She had two exacerbations in 2013 and one exacerbation in 2014. Petitioner could be on her feet for six hours during an eight hour work day. Petitioner testified credibly that she could be on her feet, but a lot of up and down or significant movement was impossible for her with her COPD. Petitioner can also lift up to 10 pounds frequently and 20 pounds occasionally.

Petitioner is not capable or does not have the Residual Functional Capacity to perform past work. Petitioner’s past work was a forklift operator. A forklift operator is classified as medium. DOT # 921.683-050. There is no credible evidence that Petitioner could perform medium work. I note that Petitioner’s COPD was diagnosed after Petitioner was no longer employed as a forklift operator. She last worked as a forklift operator in 2010. Since that time she was diagnosed with COPD, had two exacerbations in 2013 and one exacerbation in 2014.

I note that were Petitioner of an advanced age, 55, Petitioner would be disabled under grid rule 202.01. 20 C.F.R., Part 404, Subpt. P, App. 2. Under that grid rule at age 55 Petitioner would not be able to perform any substantial gainful activity in the national economy. In this case Petitioner is not yet 55. Petitioner is six months from age 55. In this particular case there are additional vocational adversities that warrant a non-mechanical operation of the grid rules. Petitioner has only a 9th grade education. Her work history is entirely unskilled. For those reasons, I find Petitioner disabled as of December 6, 2014 under a non-mechanical operation of grid rule 202.01.

CONCLUSIONS OF LAW

Petitioner is disabled with an onset date of December 6, 2014 under a non-mechanical application of grid rule 202.01.

THEREFORE, it is

ORDERED

That this case is remanded to the DDB, with the instruction that Petitioner is disabled with an onset date of December 6, 2014.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

...

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of December, 2014

\sCorinne Balter
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 1, 2014.

Sheboygan County Department of Human Services
Disability Determination Bureau