



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

████████████████████  
████████████████████  
████████████████████

DECISION

MDD/██████████

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 8, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services and the Wisconsin Disability Determination Bureau (██████████ or Bureau) in regard to Medical Assistance (MA), a hearing was held on January 14, 2015, by telephone. At the petitioner's request, the hearing record was held open to April 1, 2015.

The issue for determination is whether petitioner is disabled for MA or MAPP purposes.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

████████████████████  
████████████████████  
████████████████████

Respondent:

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

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Outagamie County.
2. Petitioner applied for MA/MAPP on March 18, 2014 (MAPP has a higher financial limits than MA). By letter dated July 16, 2014, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on November 21, 2014.

3. [REDACTED]'s basis for determining that the petitioner was not disabled was code N30 – a non-severe impairment that does not prevent substantial gainful activity.
4. The petitioner was employed part-time (up to 20 hours weekly) at the time of application.
5. The petitioner, age [REDACTED], is of low normal weight and has diagnoses of moderate Crohn's Disease, gastritis, irritable bowel syndrome with constipation, fibromyalgia, dysautonomia, ADHD, insomnia, Vitamin D and iron deficiency, postural orthostatic tachycardia syndrome (POTS), hypertension, chronic tension/migraine headaches, lumbago, and neck pain.
6. The petitioner does not require daily enteral nutrition via gastrostomy or parenteral nutrition via a central venous catheter. She has undergone one surgery related to her Crohn's Disease in 2005. There were no palpable abdominal masses in January 2015. Lab results from August 2014 showed hemoglobin at 12.5 (normal) and albumin at 4.5 (normal).
7. The petitioner's physician noted her normal walking gait, and normal sitting and standing posture. She has no limitations with respect to sitting, reaching, or communicating. Walking and standing are limited to approximately ten minutes, due to non-orthopedic symptoms. There are no restrictions on the petitioner's ability to grasp or pull objects, and she has no chemical sensitivities.
8. The petitioner's current employment is as a [REDACTED]. Her past relevant employment was as an [REDACTED], and as a [REDACTED]. In those employments, she only rarely did lifting.
9. The petitioner's impairments, in total, constitute a "severe" impairment. She cannot return to prior employments that involve prolonged standing or lifting. [REDACTED] does assert that the petitioner could do sedentary work.
10. The petitioner, age [REDACTED] at the time of hearing, has a 12<sup>th</sup> grade education plus [REDACTED] training. Her employment is in a [REDACTED].
11. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application.

### DISCUSSION

The standards used for determining disability are set forth at 20 C.F.R. §416.901 and 20 C.F.R. 404, Appendix 1. To be found disabled, the petitioner must pass several steps in a prescribed disability evaluation procedure. 20 C.F.R. §416.920. The first query is whether or not the petitioner is engaging in "substantial gainful activity." I will assume that she is not in order to pass her for MAPP in the sequential evaluation. The second requirement in the evaluation is that she has a severe impairment expected to last for at least 12 months. A severe impairment is one which significantly limits a person's physical or mental abilities to do basic work activities. I conclude that the petitioner has a severe impairment due to her Crohn's diagnosis.

The third step in the sequential evaluation is the determination as to whether the petitioner's impairments meet or are equivalent to one of the disability listing standards found in Appendix 5. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of her ailments meets or equals a listed standard. The petitioner's condition does not meet the relevant Listing 5 standard, which pertains to gastro-intestinal disorders. The disability regulations direct that Crohn's Disease be evaluated under section 5.06:

*5.06 Inflammatory bowel disease (IBD)* documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

**A.** Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

OR

**B.** Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

*Id.*, §5.06, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.

The petitioner's condition does not meet or equal any of the Listing 5.0 standard above. For purposes of MAPP eligibility (earnings disregarded), this ends the inquiry, and the petitioner is not disabled for MAPP purposes. As an informational point, the rest of the conventional MA disability evaluation is gone through below.

In the fourth step of the evaluation process, PDB considers whether an applicant can return to prior employment. If the applicant *can* return to one of her prior jobs, she is not disabled. If the applicant *cannot* return to any of her prior jobs, the analysis moves to the fifth step. I agree with the PDB that the petitioner can continue in her current [REDACTED] job, during which she is seated at least 87% of the time. This results in a conclusion that she is not disabled for MA purposes.

Even if I had concluded that the petitioner cannot return to her current employment and went to the fifth step of the evaluation process, she would not be “disabled.” The fifth and final step considers whether the petitioner, when her age, education, job skills and exertional capacity are considered, retains the ability to do *any* work in the economy. In disability jargon, the petitioner is a younger person, with a high school education, and experience in semi-skilled labor. 20 CFR §416.963-.965. She has no communicative limitations. The [REDACTED] asserts that the petitioner has the ability to exert herself at the level required for sedentary work. The exertional categories are sedentary, light and medium work. Light work involves the occasional lifting of 10 pounds, while medium work involves regular lifting of objects of up to 25 pounds. Looking at these limitations, the vocational rule finds the petitioner to be “not disabled.” See Appendix 2, rule 201.28.

As an informational note, if the petitioner’s household income drops below 100% of the federal poverty line, the petitioner would become eligible for MA without having to prove disability. MA can be applied for at any time online at [www.access.wi.gov](http://www.access.wi.gov). The 100% gross income limit for a household of six is currently \$2,714 monthly.

### CONCLUSIONS OF LAW

Petitioner is not disabled as that term is used for MA or MAPP purposes pursuant to Wis. Stat. § 49.47(4).

**THEREFORE, it is**

**ORDERED**

That the petition for review 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**

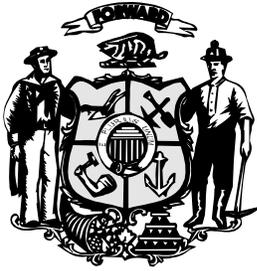
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 30th day of April, 2015

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\sNancy J. Gagnon  
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 1, 2015.

Outagamie County Department of Human Services  
Disability Determination Bureau