



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
Redact
[REDACTED]

DECISION

MDD/162248

PRELIMINARY RECITALS

Pursuant to a petition filed September 12, 2014, under Wis. Stat., §49.45(5), to review a decision by the Disability Determination Bureau (DDB) to deny disability for Medical Assistance (MA) purposes, a hearing was held on February 11, 2015, by telephone. A hearing set for January 14, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is disabled.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
Redact
[REDACTED]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 52-year-old resident of Rock County. She is staying temporarily in Florida.
2. Petitioner applied for MA as a disabled person on March 13, 2014. By a letter dated July 31, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the determination of November 24, 2014.
3. Petitioner has lower back pain; she had a discectomy in 2008 that did not alleviate the pain. She has trouble standing and sitting in place for extended periods of time.
4. Petitioner also takes medication for depression and anxiety. The medication helps keep petitioner stable.

5. In recent medical notes petitioner is shown to have a slow and antalgic gait with reduced left side range of motion. Other physical tests are in normal ranges. Petitioner is capable of light level work.
6. Petitioner currently is eligible for MA. Department records show that she qualified under the new BadgerCare Plus (BC+) program for childless adults, and has had coverage since April, 2014.

DISCUSSION

Prior to April, 2014, to be eligible for MA, an adult female under age 65 had to 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. Beginning April, 2014, adults with household income less than 100% of the federal poverty line can be eligible for MA also. The income limit for a two-person household is \$1,310.83.

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, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of her medical condition, and 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, she 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 is not working and that she 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 meets or equals no listing. I agree. The listings for back pain at Listing 1.05 require specific medical findings not evident in petitioner's case, but most importantly to include significant limitations in range of motion or motor ability. While petitioner has some reduction in range of motion, it does not rise to the level required 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 not fully perform past work, but could perform other work.

The DDB found that physically petitioner was capable of doing light level work. Light level work means frequent carrying of objects up to 10 pounds and occasional carrying of objects up to 20 pounds. 20 C.F.R. §416.967. The DDB cited Rule 202.10, which is found at Appendix 2 at 20 C.F.R., Part 404, Subpart P. Rule 202.10 provides that a person of petitioner's age and training who is able to do light work is by definition not disabled.

A vocational expert at the DDB concluded that, based upon petitioner's medical records, she is capable of light level work. The problem for petitioner is that she has difficulty finding an employer who will hire her, but the standard is not whether a person will be hired, it is whether she is capable of doing the work. I

have reviewed the medical records and cannot disagree with the DDB's finding. There is no medical evidence to rebut the conclusion that petitioner is capable of light level work.

As noted in the findings above, petitioner already is eligible for MA under the new BC+ program, and it appears that she is unaware of the eligibility. However, the eligibility is scheduled to end at the end of February, 2015. A review was scheduled for February 9 and cancelled because petitioner's mail was returned to the agency, and she now is listed as living in Florida instead of Wisconsin. Petitioner will need to contact her county agency if she wants to have her eligibility renewed. She also could reapply if and when she returns to Wisconsin.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for Wisconsin elderly/disabled MA coverage.

THEREFORE, it is ORDERED

That 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 13th day of February, 2015

\sBrian C. Schneider
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 13, 2015.

Rock County Department of Social Services
Disability Determination Bureau