



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/162401

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 24, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Langlade County Department of Social Services in regard to Medical Assistance, a hearing was held on March 03, 2015, at Antigo, Wisconsin.

The issue for determination is whether petitioner is disabled for purposes of state medical assistance eligibility.

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:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Langlade County. He has an HSED. He previously worked as a housepainter and delivery driver.
2. Petitioner's medical records reflect a history of lower back pain. Physicians have described degenerative disc issues and some evidence of herniations.
3. Petitioner's record reflect a history of multiple pain management medications including Oxycodone, Dilaudid, Morphine as well as muscle relaxants such as Flexeril and Valium.

4. Petitioner's medical providers have indicated in the records that he should not sit or stand for long periods.
5. Petitioner is able to bathe and dress himself. He cares for his wife. He does housework. He has been enrolled in college and has performed school work working toward a computer vocation. Petitioner can drive a car and go shopping.
6. Petitioner applied for MA based on disability on 4/7/14.
7. The DDB determined that petitioner is capable of light work and is not disabled. Notice was sent to petitioner denying MA on 9/9/14.

### DISCUSSION

To be eligible for MA, an adult female 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 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 fourth and fifth steps occur if the impairments do not meet the listings, which they do not in this case. 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 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 records do not demonstrate that this is not correct. While I believe it would be best for petitioner to find a job where he can change positions often, the records do not support that he is incapable of some light level work.

Based on the written record and the testimony at the hearing, petitioner can do at least light level work.

**CONCLUSIONS OF LAW**

Petitioner is not disabled for purposes of state medical assistance eligibility.

**THEREFORE, it is ORDERED**

That this appeal 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 11th day of March, 2015

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\sJohn P. Tedesco  
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 March 11, 2015.

Langlade County Department of Social Services  
Disability Determination Bureau