



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/162757

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 1, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Disability Determination Bureau (DDB or Bureau) in regard to Medical Assistance (MA), a hearing was held on January 14, 2015, by telephone.

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

There appeared at that time 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:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Monroe County.
2. Petitioner applied for MA on April 3, 2014. By letter dated October 20, 2014, the Bureau found that petitioner was not disabled. Petitioner sought reconsideration, but the Bureau affirmed its determination on December 15, 2014.
3. DDB's basis for determining that the petitioner was not disabled was code N32 – a severe impairment that does not prevent substantial gainful activity in a different occupation.

4. The petitioner was employed part-time at the time of application.
5. The petitioner has diagnoses of hepatitis C, left knee pain related to degenerative changes, hypertension and GERD. He complains of episodes of lightheadedness and shortness of breath. Currently, he is not suffering symptoms related to his hepatitis C. There is also a history of anemia and a history of pelvic floor dysfunction, for which he received treatment. He is a long-time smoker and has a BMI that ranges from 27 to 30.7. Regarding his cardiac health, an ECG performed in June 2014 was normal. Similarly, a treadmill stress ECG performed in April 2014 was normal, with a workload of 8.1 METS and normal sinus rhythm. A viewing of all cardiac structures was normal, including the aorta. The Bureau paid for an examination of the petitioner in September 2014, which did not reveal any medical problems in addition to those mentioned above.
6. The petitioner has no limitations with respect to sitting, reaching, or communicating. There are no restrictions on the petitioner's ability to grasp or pull objects, and he has no chemical sensitivities. However, he does have difficulty with walking normal distances, bending, and crouching.
7. The petitioner's past relevant employment was in factories and food service. In those employments, he frequently lifted loads of 25 pounds or more.
8. The petitioner's impairments, in total, constitute a "severe" impairment. He cannot return to his prior factory employment due to the high/heavy exertional requirements. DDB does assert that the petitioner could do medium work.
9. The petitioner, age 61 at the time of hearing, has a 10<sup>th</sup> grade education (per his testimony). His previous employment was in unskilled occupations.
10. The petitioner has not applied for SSI or Title II Social Security Disability benefits within a year of this MA application. [With the petitioner's consent, this Judge confirmed against Social Security records that he has not applied for those cash programs in the last year.]

### 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." He is not; therefore, he passes the first test in the sequential evaluation. The second requirement in the evaluation is that he 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 (and the DDB has conceded by using the denial code N32) that the petitioner has a severe impairment.

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 4. I have reviewed the listing standards that might apply to the petitioner's ailments, and conclude that none of his ailments meets or equals a listed standard. The petitioner's condition does not meet the relevant Listing 4 standard, which pertains to cardiac disorders:

#### **4.01 Category of Impairments, Cardiovascular System**

**4.02 Chronic heart failure** while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability  
...

**4.04 Ischemic heart disease**, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign-or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less: ...

*Id.*, §4.02 - .04, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.

The petitioner's condition does not meet or equal any of the Listing 4.01 standards. Specifically, he does not have the ejection fraction limitation or heart enlargement described above. He also does not have an aortic aneurysm, images of blocked arteries, recurrent arrhythmias, a heart transplant, O2 saturation under 90 percent, or images showing peripheral arterial disease.

In the fourth step of the evaluation process, DDB considers whether an applicant can return to prior employment. If the applicant *can* return to one of his prior jobs, he is not disabled. If the applicant *cannot* return to any of his prior jobs, the analysis moves to the fifth step. The petitioner and DDB agree that the petitioner cannot return to his factory job.

The fifth step of the evaluation process considers whether the petitioner, when his 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 person approaching advanced age, with a limited education, and experience in unskilled labor. 20 CFR §416.963-.965. He has no communicative limitations. The DDB asserts that the petitioner has the ability to exert himself at the level required for medium 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 203.03. I concur.

### **CONCLUSIONS OF LAW**

Petitioner is not disabled as that term is used for MA 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 25th day of February, 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 February 25, 2015.

Monroe County Department of Human Services  
Disability Determination Bureau