



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

MDD/163606

PRELIMINARY RECITALS

Pursuant to a petition filed January 14, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Disability Determination Bureau in regard to Medical Assistance, a telephone hearing was held on February 19, 2015.

The issue for determination is whether the petitioner is disabled.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Columbia County.
2. Petitioner applied for MA on or about April 3, 2014. By a letter dated December 1, 2014, the DDB determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the determination on January 27, 2015.
3. Petitioner has severe back pain, osteoarthritis and degenerative changes noted in her spine, both knees, and both hands.

4. The DDB found that petitioner is capable of lifting up to 5 pounds, walking for 5-10 minutes, and functionally capable of light work with fingering limited to frequent, but not constant.
5. Petitioner previously worked as a Certified Nursing Assistant (CNA). She is presently unemployed and last worked as a CNA in September of 2013.

DISCUSSION

To be eligible for MA, an adult female under age 65 must be disabled, blind, 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 DDB found that petitioner meets or equals no listing. 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. Listing 1, which pertains to the musculo-skeletal system, states:

1.01 Category of Impairments, Musculoskeletal

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

...

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord.

With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, ...;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging,

1.05 Amputation (due to any cause). ...

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 Fracture of an upper extremity with nonunion of a fracture ...

1.08 Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk, or face and head, under continuing surgical management, as defined in 1.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 1.00.

Id., §1.01, *et seq.*, online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>. The petitioner's condition does not satisfy the above criteria.

For step 4, the DDB concluded petitioner was not capable of returning to her past work, and, therefore, step 4 is satisfied. For step 5, when the DDB reviewed petitioner's residual functional capacity to perform other work, it determined petitioner's ability to do light work activities was not so significantly limited by her condition that she must be found disabled. Petitioner's physical limitations were considered in making this determination.

The fifth step of the evaluation process 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 terms, the petitioner is 49 years old, with a high school education (GED), and experience and training as a CNA. 20 CFR §416.963-.965. She has no communicative limitations. 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. For a 49-year-old with a high school education, limited to light work due to her back, knee and hand pain, the result from the SSA's Medical-Vocational Guidelines would still be a determination of "not disabled." See Appendix 2, rule 202.20 - .22. The same negative result would occur if the petitioner was limited to sedentary work.

The definition of light work is found at 20 C.F.R. § 404.1567 and provides as follows:

(b) Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

The definition of sedentary work is found at 20 C.F.R. § 404.1567 and provides as follows:

(a) Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

With respect to petitioner's physical capabilities, the DDB – both at the initial and reconsideration levels – determined petitioner had some exertional limitations, in the areas of lifting/carrying, standing/walking. However, it was also determined that petitioner had no gait disturbance and has full range of motion of knees on exam. Therefore, the DDB concluded petitioner was capable of performing light work activities, as her medical records do not support the degree of limitation that petitioner claims. See 20 C.F.R. § 404.1567(b).

Based upon my review of the record before me, I am unable to equate petitioner's testimony regarding her disabilities with her medical records. While petitioner does have physical limitations as a result of her severe impairments, the medical and vocational information in her file supports the conclusion that she should be capable of performing light and/or sedentary work activities. Accordingly, I must conclude that petitioner is not disabled for MA purposes.

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 26th day of March, 2015.

\sPeter McCombs
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 26, 2015.

Columbia County Health & Human Services
Disability Determination Bureau