



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/165903

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on June 17, 2015, at Barron, Wisconsin.

The issue for determination is whether the petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Barron County.
2. The Disability Determination Bureau most recently denied the petitioner's application for medical assistance based upon a disability on May 6, 2015.
3. The petitioner is 60 years old.

4. The petitioner has not worked since 2007 when he made drill bits with a machine. He had done this job for 21 years.
5. The petitioner has a slightly bent trigger finger on each hand.
6. The petitioner's FVC score was 4.5 and his FEV score was between 2.53 and 2.58 on April 7, 2015.
7. The petitioner cannot lift more than 30 pounds. He is limited in how far he can walk.

DISCUSSION

The petitioner is a 60-year-old man who seeks to be found disabled in a medical assistance matter. To be found disabled, he must meet the Supplemental Security Income (SSI) definition of disability found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. § 49.47(4)(a)4, Stats. A person is disabled if she cannot engage in any substantial gainful activity because of a medically determinable physical or mental condition that will, or has, lasted at least twelve months. To determine if this definition is met, the following are evaluated in sequence: the claimant'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. 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 substantial gainful employment, he will be found to be not disabled without further review. If he is not working, the Bureau must determine if he 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 petitioner stopped working eight years ago and the bureau found that he 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 Bureau found that the petitioner meets or equals none of the listings. He contends he has been diagnosed with emphysema. To meet the listing for any lung disease he must have an FEV score below 1.55 or a FVC score below 1.75. Appendix 1, § 3.02A and B. His most recent FEV score was between 2.53 and 2.58 and his most recent FVC score was 4.5. This does not meet the listing. He also contends he has fingers he cannot straighten, but to meet the listing for skeletal problems, he must demonstrate an "extreme loss of function of both upper extremities." Appendix 1, § 1.00B2c. His records show that one of his trigger fingers is hooked and the other is starting to be. This does not meet the listing.

Because the petitioner's impairment does not meet the listings, the Bureau must determine whether he can perform past jobs. 20 C.F.R. § 416.960(b). It conceded that he cannot. Because he cannot perform past work, it is necessary to determine whether he can perform other work that would be considered substantial gainful activity. 20 C.F.R. § 416.960(c). In order to determine whether he can perform gainful activity, it is necessary to look at his age, schooling and training, marketable job skills, and physical ability. The petitioner is almost 60 years old, which is considered close to retirement age, and has no formal schooling or training past high school. 20 CFR §416.963(d). Disability rules state:

If you are closely approaching retirement age (age 60-64) and you have a severe impairment(s) that limits you to not more than light work we will find that you have skills that are transferable to skilled or semi-skilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry.

20 CFR §416.963(d).

Light work involves lifting up to 10 pounds frequently and 20 pounds occasionally. 20 C.F.R. § 416.967(b). Medium work, the next level, involves lifting up to 25 pounds frequently and 50 pounds occasionally. 20 C.F.R. § 416.967(c). In addition, to perform medium work a person must have no trouble walking, standing, or sitting.

The Disability Determination Bureau contends that the petitioner can perform medium work. He states that he can lift only 30 pounds and cannot walk more than a quarter mile. The Disability Determination Bureau is skeptical of his claims, arguing that they are not consistent with his medical records. I understand the agency's skepticism. Nevertheless, he has been smoking for over four decades and, at 140 pounds, is rather small for a man 5'9 ½" tall. His testimony concerning his limitations is confirmed by his doctor. Although this may be based solely on what the petitioner told his doctor, I have no way of knowing this. The petitioner must prove that he is disabled by the preponderance of the credible evidence, a fairly low standard that requires only that he demonstrate that his disability is more likely than not. Based upon his medical records and his doctor's statement, I find that he has met this standard.

Medical assistance rules allow eligibility retroactive to as far back as the first day of the month three months before the application was filed if all the requirements of eligibility are met. Wis. Admin. Code § DHS 103.08, Wis. Admin. Code. The petitioner applied for medical assistance in December 2014. (I cannot determine the exact date because the county agency did not stamp it in the file.) The petitioner has not worked in eight years, and there is no evidence his condition has changed in the last year. However, he did not turn 60 until November 2014. I will have the county agency review his eligibility back to that month because he would not have met the stricter standards for those younger than 60.

This decision does not guarantee that the petitioner will receive medical assistance because the agency will still have to determine whether he meets the program's financial standards.

CONCLUSIONS OF LAW

The petitioner has been disabled since November 2014.

THEREFORE, it is ORDERED

That this matter is remanded to the county agency with instructions to continue processing the petitioner's eligibility for medical assistance based upon a disability to determine whether he meets the program's financial criteria. If he does, the agency shall find him eligible for medical assistance based upon a disability no earlier than November 1, 2014. It shall take this action within 10 days of the date of this decision.

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 7th day of July, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 7, 2015.

Barron County Department of Human Services
Disability Determination Bureau
mlstokesfamily@hotmail.com