



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

In the Matter of

█ █
████████████████████
████████████████████

DECISION

MDD/166510

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 Brown County Human Services in regard to Medical Assistance, a telephone hearing was held on July 22, 2015.

The issue for determination is whether petitioner is disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

█ █
████████████████████
████████████████████

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 Brown County.
2. Petitioner applied for MA on or about March 13, 2013. By a letter dated March 20, 2014, the respondent determined that petitioner was not disabled. Petitioner sought reconsideration, but the DDB affirmed the determination on June 1, 2015.
3. Petitioner has chronic pain and weakness in her hands, feet, and knee, and has difficulty sleeping. Petitioner has not seen her physician in two years due to lack of insurance and inability to afford a doctor visit otherwise.

4. The respondent found that petitioner has osteoarthritis of the hands, is capable of lifting 1 to 2 pounds, and can walk for 5-10 minutes.
5. Petitioner has not worked for two years. Her last employment was at the [REDACTED].
6. Petitioner is an immigrant from [REDACTED], appeared at hearing with a translator, and has no formal education.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. Title XVI of the Social Security Act defines “disability” as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months. 20 C.F.R. § 404.1505. Therefore, this administrative law judge is required to review the petitioner’s current MA appeal utilizing the same tests for disability as those used by the Social Security Administration in determining disability for Supplemental Security Income (Title XVI benefits).

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. Thus, while the observations, diagnoses, and test results reported by a physician are relevant evidence, the opinions of the doctors as to whether an individual is disabled are not conclusive as to that determination.

In addition, the definitions of disability in the regulations governing MA, Supplemental Security Income (SSI), and Social Security Disability Insurance (SSDI) programs require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it is severe, that it affects an individual’s basic work activities, and that it will last 12 months or longer as a severe impairment. Therefore, while an individual’s testimony as to his or her impairments is important, it is not determinative. Allegations of physical or mental limitations must be supported by medical evidence in the record.

THE FIVE-STEP DISABILITY DETERMINATION PROCESS

The above requirements are delineated in five sequential tests established in the Social Security Administration regulations. These are general steps to evaluating a disability application, whether it includes only physical, only mental, or a combination of physical and mental impairments. Those tests are as follows:

- (i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of §416.920.)
- (ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of §416.920.)
- (iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of §416.920.)

- (iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. See paragraphs (f) and (h) of §416.920 and see § 416.960(b).
- (v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. See paragraphs (g) and (h) of §416.920 and see § 416.960(c).

20 CFR 416.920b.

The analysis of petitioner's case stops at step 2. The respondent's findings regarding severity state:

...Current severity cannot be assessed d/t MA Waiver not being returned thus CE cannot be ordered. ...

See, *Medicaid Decision Worksheet*, May 26, 2015. However, after the petitioner's hearing date was set by the Division of Hearings and Appeals, but before the date of the hearing, the Division of Hearings and Appeals received petitioner's executed MA Waiver on June 15, 2015. As such, this matter shall be remanded to the respondent to conduct a Consultative Examination, now that the waiver is in hand. In doing so, it must review her latest medical reports and may conduct any further medical examinations it determines are necessary. Petitioner must cooperate with this process. If the Bureau continues to find she is not disabled, she may file a new appeal.

CONCLUSIONS OF LAW

There is insufficient evidence to determine whether the petitioner is disabled.

THEREFORE, it is

ORDERED

That this matter is remanded to the respondent with instructions that it conduct a Consultative Examination in light of the recent receipt of an executed Waiver. The petitioner shall cooperate with the respondent if it determines that she requires further medical examinations. If she disagrees with the respondent's decision, she may file a new appeal. The Bureau shall render its decision within 30 days of the date of this decision. It may deny the claim if the petitioner does not cooperate with it in obtaining whatever evidence it needs to evaluate her situation.

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 31st day of July, 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 July 31, 2015.

Brown County Human Services
Disability Determination Bureau