



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/168377

PRELIMINARY RECITALS

Pursuant to a petition filed July 20, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on October 15, 2015, at Shell Lake, 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]
[REDACTED]

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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 Washburn County.
2. The Disability Determination Bureau most recently denied the petitioner's application for medical assistance based upon a disability on August 28, 2015, finding that she was not disabled.
3. The petitioner is employed as an in-home caregiver. She works 12 and 24-hours shifts, earning \$125 for a 12-hour shift and \$150-\$175 for a 24-hour shift. She generally works 78 to 123 hours per week. She earned \$10,225 from the end of May until October 10, 2015. That amount included

\$490 on her last semimonthly paycheck, which was much lower than normal because she was away for some time to attend a funeral.

DISCUSSION

To qualify for medical assistance as a disabled person, one must meet the disability standard set by Supplemental Security Income (SSI) regulations. 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. The petitioner 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. The Disability Determination Bureau determines if an applicant meets this definition by evaluating in sequence her 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 to be substantial gainful employment, she will be found to be not disabled without further review. To be considered engaged in substantial gainful employment a person generally must make at least the following income:

- (ii) *Beginning January 1, 2001*, and each year thereafter, they average more than the larger of:
 - (A) The amount for the previous year, or
 - (B) An amount adjusted for national wage growth, calculated by multiplying \$700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998.

20 CFR §416.974 (b)(2).

Using this formula and rounding to the nearest \$10, the Social Security Administration set the 2015 wage limit at \$1,090 per month. <http://www.socialsecurity.gov/oact/cola/sga.html>. The petitioner testified she usually works 78-123 hours per week as an in-home caregiver. She did work less and earned only \$490 in her most recent pay period—she is paid twice a month—but this is because she had to attend to “personal issues” involving a death and funeral. She testified that she began working at the end of May 2015 and that as of October 10, 2015, she has earned \$10,225. Dividing this by five to account for the months she has worked at her current job gives her an average of \$2,045 per month. This likely understates what she usually earns in a month because she worked much less than normal during the last pay period and she has worked less than five full months. Regardless, there is no doubt that she is engaged in substantial gainful employment. Therefore, she does not meet the SSI disability standard and is ineligible for medical assistance based upon a disability.

In making this decision, I am aware that the petitioner has significant health problems. Unfortunately, SSI standards are based solely upon one’s ability to work and not on one’s need for medical care. I have no authority to ignore these rules in a particular case.

CONCLUSIONS OF LAW

The petitioner is not disabled because she is engaged in substantial gainful employment.

THEREFORE, it is

ORDERED

The petitioner's 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 15th day of October, 2015

\sMichael D. O'Brien
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 October 15, 2015.

Washburn County Department of Social Services
Disability Determination Bureau