



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of:

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDD/169707

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 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 [“DDB”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on November 24, 2015.

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

There appeared at that time via telephone the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Represented by:

[REDACTED], petitioner’s wife  
[REDACTED]  
[REDACTED]

Respondent:

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

**ADMINISTRATIVE LAW JUDGE:**

Sean P. Maloney  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (59 years old) is a resident of Rock County, Wisconsin.
2. Petitioner has diabetes mellitus type II, obesity, neck pain, sleep apnea (states he sleeps 4 to 5 hours per night and gets up to use the restroom 5 to 6 times per night), hypertension (high blood pressure), hyperlipidemia (high cholesterol), Gastroesophageal Reflux Disease [“GERD”], sees a

chiropractor for his back, and had colon polyps which were removed in March 2015; he states that he might be going blind in his left eye.

3. Petitioner does yard work around his house and often around his son's house for a few hours every day, goes outside every day, drives a car, and does grocery shopping; he can walk 1 mile before he needs a rest and then needs to rest for 2 or 3 minutes; he can care for himself (dress, bath, toilet, etc.), has a good memory, and is able to sit, stand, and walk for an hour each without a break.
4. Petitioner completed the 10<sup>th</sup> grade (he is not a high school graduate); he is literate and can read and write in English; his testified that he can lift 40 or 50 pounds.
5. Petitioner has been self-employed at an auto business since 1980 and currently works about 15 to 30 hours per week (his wife testified that the business had a loss this year).
6. DDB determined that petitioner is not disabled because his impairments are not severe (Reg-Basis Code N30).

### DISCUSSION

To be eligible for MA as disabled, a person must meet the definition of *disabled* that is used for Supplemental Security Income ["SSI"] purposes. See, Wis. Stat. § 49.47(4)(a)4. (2013-14). The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I (§ 416.901 et. seq.), and, by reference, Appendices 1 and 2, Subpart P, Part 404.

To be *disabled*, for an adult, means the inability to do any substantial gainful activity (i.e., the inability to work) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. See, 20 C.F.R. § 416.905(a). Unless the impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is called the *duration requirement*. See, 20 C.F.R. § 416.909.

To determine if a person is disabled, a 5 Step prescribed sequential evaluation procedure is used. See, 20 CFR § 416.920. If a person can be found to be disabled or not disabled at any point in the prescribed sequential evaluation procedure the prescribed sequential evaluation procedure is terminated and no further evaluation is made. See, 20 C.F.R. § 416.920(a)(4).

DDB found petitioner to be not disabled at Step 2 of the prescribed sequential evaluation procedure because it determined that petitioner's impairments are not severe (Reg-Basis Code N30).

The 5 Step prescribed sequential evaluation procedure is as follows.

#### (1) Current Work

The first step in the prescribed sequential evaluation procedure is to determine whether the person is currently working and, if so, if the work the person is doing is substantial gainful activity. For an adult to be disabled they must be unable to do any substantial gainful activity which exists in the national economy. See, 20

C.F.R. § 416.905(a) (2013). If a person is working and the work he or she is doing is *Substantial Gainful Activity*, that person will be found not disabled regardless of his or her medical condition or his or her age, education, and work experience. see, 20 C.F.R. § 416.920(b).

A *Substantial Gainful Activity* ["SGA"] means work that: (a) involves doing significant and productive physical or mental duties; and, (b) is done (or intended) for pay or profit. See, 20 C.F.R. §§ 416.910 & 416.972.

DDB has conceded that petitioner, although working, is not engaged in SGA by its use of Reg-Basis Code N30 and its finding at Step 2 that petitioner is not disabled because his impairments are not severe. See, 20 C.F.R. § 416.920(a)(4).

## (2) Severe Impairment

The second step in the prescribed sequential evaluation procedure is to determine whether the person has a *severe impairment* expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A *severe impairment* is one which significantly limits the person's physical or mental ability to do *basic work activities*. See, 20 C.F.R. §§ 416.920(c) & 416.921(a). *Basic work activities* are the abilities and aptitudes necessary to do most jobs. See, 20 C.F.R. § 416.921(b). Examples of *basic work activities* include:

- (a) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (b) capacities for seeing, hearing, and speaking;
- (c) understanding, carrying out, and remembering simple instructions;
- (d) use of judgment;
- (e) responding appropriately to supervision, co-workers, and usual work situations; and,
- (f) dealing with changes in a routine work setting.

see, 20 C.F.R. § 416.921(b).

The evidence in the record of this matter shows that petitioner is not significantly limited in his physical or mental ability to do *basic work activities*. It is noted that he states that he might be going blind in his left eye. However, there is insufficient medical documentation to support this claim. Further, he makes no claim that the vision in his right eye is impaired. Therefore, DDB was correct to find petitioner to be not disabled because his impairments are not severe.

It is not necessary to consider the last 3 steps in the 5 Step prescribed sequential evaluation procedure. See, 20 C.F.R. § 416.920(a)(4).

## CONCLUSIONS OF LAW

For the reasons discussed above, petitioner is not disabled for MA purposes.

**NOW, THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby 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 2nd day of December, 2015

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\sSean P. Maloney  
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 December 2, 2015.

Rock County Department of Social Services  
Disability Determination Bureau