



FH

[Click here to enter text.](#)

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

In the Matter of

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

DECISION

Case #: MDD - 200680

PRELIMINARY RECITALS

Pursuant to a petition filed on December 8, 2020, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the La Crosse County Department of Human Services regarding MDD, a hearing was held on January 6, 2021, by telephone.

The issue for determination is whether petitioner meets the legal standard for disability required to establish MA eligibility.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: No appearance

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 45-year old resident of La Crosse County. She applied for Medical Assistance (MA)—Disability benefits on December 18, 2019.
2. Petitioner has medical diagnoses that include multiple sclerosis (MS), migraines, vertigo, adjustment disorder with depression and anxiety, and neuropathic pain. Petitioner’s diagnosis of MS was made in 2012. She uses a cane and walker. She has regularly sought treatment from a chiropractor to address pain for her back, neck, shoulder, and legs.
3. On May 11, 2020, petitioner met with her neurologist, Dr. [REDACTED]. The medical notes of that appointment indicate petitioner’s MS is clinically stable. It noted surveillance MRI of the brain in September 2017 and January 2019 were stable and an MRI cervical spine from January 2019 was stable. The records also noted gait and balance problems vary per day, there were falls without injury, and that petitioner uses a cane or walker. Vertigo was stable with day to day fluctuations. No MS related vision issues. Anxiety and depression were managed with medications and therapy. Migraines were managed adequately. It was noted that petitioner had an EDSS (Expanded Disability Status Score) that was stable at 4.5 (ambulatory without aid or rest for 3 blocks). A MoCA (Montreal Cognitive Assessment) was scored at 25/30 on January 23, 2013, and 26/30 on July 23, 2014.
4. On July 1, 2020, petitioner again met with Dr. [REDACTED]. The medical notes indicate that petitioner had not had a clinical relapse of MS since August 2016 and brain and cervical spine MRI were stable. It was noted that petitioner’s MoCA score decreased to 22 (mild cognitive impairment). The EDSS was stable at 4.5. A 25 foot timed walking trial was completed at an average of 10.66 seconds with the use of a cane. It was noted that petitioner’s gait was slow and unsteady with dragging of the right foot. Normal muscle tone and bulk in all four extremities but right pronator drift was found. Muscle Power Assessment (Right/Left): deltoids (5/5), biceps (5/5), triceps (5/5), interossei (5/5), grip (5/5), iliopsoas (5/5), hamstrings (5/5), quadriceps (4+ /5), anterior tibialis (4/5), and peroneal (4/5).
5. Petitioner is a high school graduate and obtained an associate degree from a trade school. In the past sixteen years she has had the following paid employment: clerical/cleaning from September 2004 to July 2008; bartender from September 2014 to December 2014; cleaning from February 2015 to August 2016; painting dumpsters from April 2018 to 2020; and cleaning/clerical work from December 2017 until current.
6. On March 26, 2020, a medical consultant with the Disability Determination Bureau (DDB) completed a Physical Residual Functional Capacity Assessment. Listing 11.09 (multiple sclerosis) was considered but found not to be met as there were no marked limitations in either physical functioning or mental impairments. The consultant found that petitioner’s application and supporting documentation established that while she had functional limitations they were not sufficient to preclude the ability to perform all work. The assessment specifically noted that petitioner retained the ability to perform light work.
7. On March 31, 2020, a mental health consultant with the DDB concluded that petitioner’s mental health impairments do not meet or equal a listing. Listings 12.04 (depressive-related disorders) and 12.06 (anxiety disorders) were considered. No marked or extreme limitations were found. It was noted petitioner had moderate limitations in the areas of Remembering and Concentration, mild limitations in Adapting/Managing Stress, and no limitations in Interacting with others. The examiner found that even with petitioner’s limitations she was capable of meeting the basic mental demands of unskilled work.
8. By notice dated April 9, 2020, the agency notified petitioner that she did not qualify for MA-Disability as she did not meet the disability requirements of Social Security law and regulations.

9. On May 4, 2020, petitioner requested reconsideration of the agency's denial. She noted recent changes in her condition that included struggling with anxiety, recent panic attacks, numbness in hands, and that she uses her cane more frequently. She also noted that she fell and cracked her tailbone in December 2019. She indicated that her chiropractor had given her a weight restriction.
10. On September 29, 2020, a mental status examination was completed by Dr. [REDACTED]. The examiner opined that petitioner had moderate limitations in Remembering and Concentration and a mild limitation in Interact with others. Her limitation was found to be marked in Adapting/Managing Stress. The examiner noted petitioner had a mild cognitive impairment. The report is silent as to the examiner's opinion of petitioner's ability to meet the basic mental demands of skilled or unskilled work, but indicated that she possessed the ability to manage funds independently. The examiner noted that petitioner had reported the functional ability to do some housework, laundry, and cooking.
11. On November 20, 2020, a mental health consultant with the DDB concluded that petitioner's mental health impairments do not meet or equal a listing. Listings 12.02 (neurocognitive disorders), 12.04 (depressive-related disorders), and 12.06 (anxiety disorders) were considered. No marked or extreme limitations were found. It was noted petitioner had moderate limitations in the areas of Remembering, Concentration, and Adapting/Managing Stress and a mild limitation in Interacting with others. The examiner found that even with petitioner's limitations she was capable of meeting the basic mental demands of unskilled work.
12. On November 24, 2020, a medical consultant with the DDB completed a Physical Residual Functional Capacity Assessment. The consultant found that petitioner's functional limitations were not sufficient to preclude her from performing all work. The assessment specifically noted that petitioner was capable of sedentary work.
13. On December 2, 2019, the agency denied petitioner's request for reconsideration.

DISCUSSION

In order to be eligible for MA as a disabled person, an applicant must meet the same test for disability as that used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). Wis. Stat. § 49.47(4)(a)4. To satisfy the legal standard for disability, an individual must, as a threshold matter, establish that s/he is unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which can be expected to result in death or which has lasted or can be expected to last for at least twelve months. See 20 C.F.R. § 416.905. In addition, an individual's circumstances must be evaluated according to the following sequential five-part test:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings.
2. An individual who does not have a "severe impairment" will not be found to be disabled.
3. If an individual is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I, subpart P of part 404 of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.)
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made.
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual

functional capacity must be considered to determine if the individual can adjust to types of work the individual has not performed in the past.

20 C.F.R. § 416.920.

When an individual has an impairment or combination of impairments resulting in both (1) physical limitations and (2) mental (emotional, psychological, and cognitive) limitations, both of those separate types of impairments must be evaluated. The federal regulations provides the following relevant guidance:

When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. ... When we assess your mental abilities, we first assess the nature and extend of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis.

20 C.F.R. 416.945(b) and (c).

Here, the DDB found that petitioner is not disabled. It initially found she retained the ability to perform light work and upon reconsideration determined she was able to perform sedentary work. This was despite her proven combination of impairments. An application of the five-step sequential disability evaluation process follows.

Steps 1 and 2: As the agency's analysis proceeded to step 3, it must have found that petitioner was not engaged in substantial gainful activity and that her impairments were severe. I have no basis to disturb those findings.

Step 3: The DDB found that petitioner's conditions do not meet or equal a listed impairment. I agree. The listings for mental impairments require loss of cognitive functioning leading to one extreme or two marked areas of impairment in daily living and functioning. See Listings 12.02, 12.04, and 12.06. While petitioner clearly has deficits, they are not at the level necessary to meet or equal the listings. I also reviewed the listing for multiple sclerosis. I agree with the DDB that this listing is not met or equaled as the record does not indicate petitioner has disorganization of motor function in two extremities resulting in extreme limitation in the ability to stand up, balance, or use upper extremities. See Listing 11.09. And, the record does not support a finding that she has a marked limitation in physical functioning AND cognitive impairment. Id. As such, she is not entitled to a finding of disability at this step.

Step 4: It appears the DDB bypassed this step of the process. As such, I will proceed to the next step.

Step 5: It was at this step in the process that the DDB denied petitioner's application. During its initial evaluation, the DDB determined that petitioner retained the abilities to perform unskilled light work. In its subsequent evaluation following petitioner's request for reconsideration, the DDB found that she retained the abilities to perform unskilled sedentary work.

Generally, an analysis at this step includes the application of the Social Security residual functional capacity (RFC) "grids" and through the use of a tool known as the "Physical Residual Physical Functional Capacity Assessment" completed by a physician Medical Consultant. The "grid" is a table that assists in the disability determination process by taking into account an applicant's age, education, past work experience, and the extent to which she maintains the ability to perform work activities despite any impairments. See 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2.

A person who is age 18 – 49, who has a high school degree or more, who has either no work history or a history of unskilled work, and who maintains the ability to perform light work is directed by the grids to be found “not disabled”. See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at 202.20. The grids also direct a finding of “not disabled” for individuals 45-49 who are limited to sedentary work despite their impairments, who are high school graduates or more, and who have skilled or unskilled work histories. Id. at 201.18. Light work includes jobs that require lifting no more than 20 pounds at a time with frequent lifting of up to 10 pounds and a good deal of walking or standing and/or some pushing and pulling. Sedentary work includes jobs that require lifting of no more than 10 pounds at a time and occasional walking and standing. See 20 C.F.R. §404.1567.

Petitioner indicated that she suffered from confusion, memory lapses, and was unable to complete processes that required multiple steps. She also indicated she lacked stamina, was a fall risk, and has experienced increased numbness in her legs and hands. She noted decreased strength in her arms but believed it may be the result of being out of shape. She acknowledged that her mental health diagnoses do not prevent her from working.

In the record are mental and physical capacity forms filled out by DDB experts. They conclude that while petitioner has significant limitations, she is nevertheless still able to work in the community. I must give those conclusions due weight in the absence of conflicting expert opinion. My review of the record found no specific physician-ordered exertional limitations. There is insufficient medical documentation in the record to rebut the DDB’s ultimate finding that she is physically able to perform sedentary work. As to her mental capacity, the DDB’s findings are not contradicted by medical evidence in the record. I would note that petitioner’s most recent MoCA score was 22, which reflects a decrease from prior assessments. My understanding is that score reflects a mild cognitive impairment. Such a finding is consistent with what appears to be an independent mental examination conducted by Dr. [REDACTED]. See, Findings of Fact # 10. However, that evidence was not shown to be in conflict with the DDB’s ultimate finding that in spite of the mild cognitive impairment petitioner is still mentally capable of performing unskilled work.

Based on my review of the record, I found the DDB’s conclusions consistent with the medical evidence. While it has been established that petitioner’s has significant limitations and ongoing health issues, she did not prove that these conditions at the present time prevent her from engaging in substantial gainful employment at the unskilled sedentary work level. The DDB’s determination that she is not disabled is affirmed.

I would note that petitioner indicated that days prior to the hearing she had an appointment with her neurologist. She did not disclose the results of any examination or assessment that may have been conducted at that time. She further declined the opportunity to hold open the record so that she could forward the medical records from that appointment. If those records document further mental or physical decline, she is encouraged to file a new application and/or update the DDB with those records. I would further note the decision reached in this case does not preclude her from filing a new application at any point in the future.

CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility.

THEREFORE, it is

ORDERED

That 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, 4822 Madison Yards Way, 5th Floor North, 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.

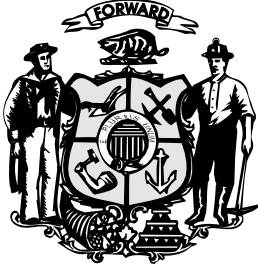
APPEAL TO COURT

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, **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 10th day of February, 2021

\s _____
Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
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 February 10, 2021.

La Crosse County Department of Human Services
Disability Determination Bureau