



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED], WI [REDACTED]

DECISION
Case #: MDD - 201432

PRELIMINARY RECITALS

Pursuant to a petition filed on March 3, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wisconsin Department of Health Services, by the Disability Determination Bureau, regarding Medical Assistance - Disability, a hearing was held on March 31, 2021, by telephone.

The issue for determination is whether the Department has correctly determined that the petitioner is not disabled for Medical Assistance – Disability purposes.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED], WI [REDACTED]

Respondent:

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

By: No Appearance
Barron County Department of Human Services
Courthouse Room 338
335 E Monroe Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 23 year-old resident of Barron County. He lives with his grandparents in a private residence. Petitioner applied for MA based on disability on or around

July 20, 2020. Petitioner is not pursuing federal social security benefits based on disability at present, and there is no concurrent federal disability determination pending.

2. Petitioner has been diagnosed with [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. He is not seeing a mental health clinician at present, and has not done so since September 2020. At present he reports he takes only [REDACTED]. (He used to take [REDACTED], [REDACTED] and [REDACTED].)
3. The petitioner is [REDACTED] tall, and presently weight about [REDACTED]. He has a full-scale IQ of [REDACTED]. He has a high school diploma, and no post-high school education or training.
4. Petitioner's work history includes jobs as a [REDACTED], [REDACTED], and [REDACTED]. He is not working at this present time; his last employment ended on a date unknown in 2018. He has some minor impairment to short term memory, but can follow 2-3 step instructions, take supervisory guidance, and work generally competently with others in his past relevant work.
5. Petitioner usually stays home during the day, and occupies his time doing using his computer, playing video games, and watching television. He stays up late, and rises late. He prepares some of his own food and it able to dress himself and bathe himself. He uses THC regularly and drinks alcohol. He smokes cigarettes. He socializes little, though this appears to be over COVID-19 concerns for his family members.
6. Petitioner does not drive a car as he does not have a driver's license.
7. On or about December 18, 2020, the Disability Determination Bureau denied the petitioner's application for MA-Disability finding that he had not established that he had a severe impairment.
8. On February 17, 2021, the petitioner filed a reconsideration application with the Disability Determination Bureau; an appeal file was opened by referral with the Division of Hearings & Appeals.
9. On March 3, 2021, the DDB affirmed the denial of MA-Disability to the petitioner finding on reconsideration that he has severe impairments, but they do not meet or equal a listed impairment; and he is able to perform and sustain unskilled work. The Bureau found that he failed at Step 5 using vocational rule 204 as a framework for the determination. See Case Development Sheet on file, upon reconsideration. I.e., he can perform unskilled work in the economy.

DISCUSSION

To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. 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. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of his medical condition, and his ability to return to vocationally relevant past work or to adapt to new forms of employment are evaluated in that sequence. 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 is found to be not disabled without further review. If he is not working, the DDB must determine if she 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 DDB initially found that he does not have a severe impairment. On reconsideration, it treated him as meeting the severe impairment standard; and he was not then working either.

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 DDB found that petitioner meets or equals no listing. I agree. The listings for mental impairments require loss of cognitive functioning leading to marked impairments in daily living and functioning. See Listing 12.04. And see, Listings 12.06, 12.10 and 12.11. While petitioner clearly has impairments, they are not anywhere near the level of severity to meet or equal these listings. Rather, all of his limitations fall in the less than moderate to moderate range at most. See, Mental Residual Functional Capacity Report, dated March 3, 2021 in the DDB file.

The fourth and fifth steps occur if the impairments do not meet the listings. The DDB must determine whether the person is able to perform past jobs. The DDB conceded the fourth step, given a lack of meaningful evidence of “past relevant work”, and went on to see if he met the fifth and final step. If not, then the agency must determine if the person can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that petitioner could perform unskilled work, and referenced Vocational Rule 204.

Petitioner does not have physical restrictions, so the DDB focused its review on his mental health status. While petitioner and his parents raise the valid point that for practical purposes most employers would not hire him due to his [REDACTED], [REDACTED], [REDACTED] and [REDACTED] symptoms, or that he may have difficulty maintaining employment, the test for disability is more of a hypothetical or theoretical test of whether he could do the work required for a low-skill, low-stress job. He has no physical limitations, can follow three step instructions, is oriented to time and place, and has a full scale IQ of [REDACTED]. He is 23. He has a history of manual labor, and simple cashier and food service work.

Even if I assume that the petitioner was only capable of sedentary work, at his age and education level, he would still be considered “not disabled” under the rules. See 20 C.F.R. §404, (Appendix 2 to Subpart P), Table 1-Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), at Rule 201.27. I must concur, at his young adult age, with full range of motion and physical skills, and the mental and cognitive skills to follow simple 2-3 step instructions and to work with other people, the evidence demonstrates that the grid indicates a result of “not disabled”. I must concur on these facts.

Should the petitioner’s conditions worsen in the future, he may of course apply again and present new clinical evidence.

CONCLUSIONS OF LAW

Petitioner is not disabled for purposes of MA-Disability.

THEREFORE, it is

ORDERED

That this 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).

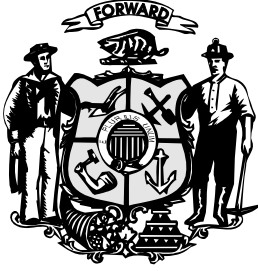
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of April, 2021



\s _____

Kenneth D. Duren
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 April 9, 2021.

Barron County Department of Human Services
Disability Determination Bureau