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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



AMENDED DECISION

Case #: MDD - 206834

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2022, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sauk Cty Department of Human Services regarding MDD, a hearing was held on February 1, 2023, by telephone.

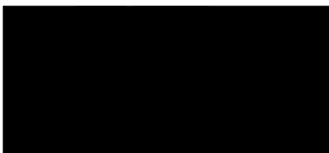
The issue for determination is whether petitioner is disabled for the purposes of MAPP eligibility.

This Decision is amended to delete extraneous text that was included in the initial Decision in error.

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:

Sauk Cty Department of Human Services
505 Broadway, 4th Floor
PO Box 29
Baraboo, WI 53913

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Sauk County.
2. Petitioner is 64 years old. She has a high school diploma.
3. Petitioner has diagnoses that include Bipolar Disorder, ADHD, PTSD, torn rotator cuff, Chronic Fatigue, Fibromyalgia, Degenerative Disk Disease. She has a history of microdiscectomy surgery, spinal fusion, and a history of falls and migraine headaches.
4. Petitioner also has a history of
5. Petitioner has recently worked as a [REDACTED] and as a [REDACTED].
6. Petitioner filed a Medicaid Disability Application on or around 7/15/21.

DISCUSSION

Petitioner wishes to be enrolled in the MAPP program. Under the Medicaid Purchase Plan ("MAPP"), which allows disabled persons to work and receive medical assistance if their income falls below 250% of the federal poverty level after excluding those amounts found in 42 USC 1382a (b). Wis. Stat. § 49.472(3)(a). Those whose income exceeds 150% of the federal poverty level, whether earned or unearned, must pay a premium. Wis. Stat. § 49.472(4)(b).

To be found disabled, she must meet the Supplemental Security Income (SSI) definition of disability. 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.

To be disabled, 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 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 (1) physical limitations and (2) mental (emotional and psychological) limitations, both of those separate types of impairments must be evaluated. The relevant federal regulations provides the following relevant guidance:

(b) *Physical abilities.* 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 . . .

(c) *Mental abilities.* 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.

(e) *Total limiting effects.* When you have a severe impairment(s), but your symptoms, signs, and laboratory findings do not meet or equal those of a listed impairment in appendix 1 of subpart P of part 404 of this chapter, we will consider the limiting effects of all your impairment(s), even those that are not severe, in determining your residual functional capacity. Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone; e.g., someone with a low back disorder may be fully capable of the physical demands consistent with those of sustained medium work activity, but another person with the same disorder, because of pain, may not be capable of more than the physical demands consistent with those of light work activity on a sustained basis. In assessing the total limiting effects of your impairment(s) and any related symptoms, we will consider all of the medical and nonmedical evidence, including the information described in § [416.929\(c\)](#).

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

An application of the five-step sequential disability evaluation process appears below.

Steps 1 and 2: It is undisputed that Petitioner is not engaged in substantial gainful activity and that her combination of impairments is severe.

Step 3: The DDB found that Petitioner’s conditions do not meet or equal a listed impairment. At hearing, Petitioner offered no argument or sufficiently persuasive evidence to dispute that finding. She thus did not establish that any of her conditions meet or equal criteria set forth in the listing of impairments. And, she is therefore not entitled to a finding of disability at this step.

Step 4: The DDB bypassed this step of the sequential evaluation process.

Step 5: As stated above, the DDB most recently denied Petitioner’s application at this step and concluded that she retained the abilities to perform medium work.

Generally, an analysis at step 5 includes the application of the Social Security “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 exertional impairments. See 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2.

According to the grids, a person who is age 60-65, as petitioner is, 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 medium work is directed by the grids to be found “not disabled”. But, if petitioner is limited to light work or less then she is disabled according to the grids.

Medium work includes jobs that require lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. Light work includes jobs that require lifting no more than 20 pounds at a time with frequent lifting of up to ten pounds and walking or standing and/or some pushing and pulling. Sedentary work includes jobs that require lifting no more than 10 pounds at a time and occasional walking and standing. See 20 C.F.R. §404.1567.

Petitioner is 64 years old, has a high school diploma, and a history of unskilled work. The Physical Residual Physical Functional Capacity Assessments completed by the DDB indicate that upon initial review, Petitioner was determined to have a medium RFC and that upon reconsideration, the medium RFC was confirmed. In this case, I find that Petitioner is capable of performing the physical demands of light work at most. I simply cannot fathom how this 64-year old with spinal fusion and disk degeneration and other spinal surgeries can be expected to lift 50 pounds or regularly carry 25 pounds. As a result, the grid would direct a finding of disabled. See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at Rule 202.04. However, Petitioner demonstrated that she has both exertional and non-exertional limitations. Her non-exertional limitations, detailed in the Findings of Fact, are significant and are related to bipolar disorder, and post-traumatic stress, and fall risk. The federal regulations provide that the grids may not be fully applicable where an individual’s impairment is not manifested solely by limitations in meeting the strength requirements of jobs. See 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, Sec. 200.00(e). That is the case here.

Petitioner spoke credibly regarding the loss of jobs due to her inability to sustain physical activity, as well as the impact of her non-exertional (mental) disabilities. At application, Petitioner also noted that she is seeking a disability determination in order to obtain eligibility for the MAPP program, which would evince a desire on her part to return to the workforce. Petitioner has established that her physical and mental limitations will limit her to sedentary work. Based on a totality of the evidence in the record, I find that the combination of Petitioner’s exertional and non-exertional impairments demonstrates that she is currently disabled.

I note that to be eligible for Medical Assistance, an individual must not only be found disabled but must also meet other non-financial and financial eligibility requirements. In other words, this decision is not the final word on whether Petitioner is eligible for Medical Assistance. Petitioner should work with her local agency to ensure that her MAPP application is processed.

CONCLUSIONS OF LAW

1. Petitioner *is* disabled as that term is used for MAPP purposes, pursuant to Wis. Stat. § 49.47(4).

THEREFORE, it is

ORDERED

That the petition for review is remanded to the county agency with instructions to continue the determination of the petitioner’s MAPP eligibility, in accord with the Conclusion of Law above.

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

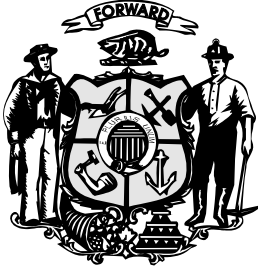
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of March, 2023



\s _____
John P. Tedesco
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 March 28, 2023.

Sauk Cty Department of Human Services
Disability Determination Bureau