



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: MDD - 208783

PRELIMINARY RECITALS

Pursuant to a petition filed on May 24, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Taylor County Department of Human Services (“the agency”) regarding an application for Medical Assistance (MA)-Disability benefits, a hearing was held on June 29, 2023, by teleconference initiated from Madison, Wisconsin.

The issue for determination is whether Petitioner meets the legal standard for disability required to establish Medicaid 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: DDB File

Taylor County Department of Human Services
540 E. College Street
Medford, WI 54451-2027

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 47-year old resident of Taylor County who filed an application for Medicaid-Disability on May 18, 2021.

2. Petitioner last worked in 2001. At that time, she worked part-time as a dishwasher for [REDACTED]. She stopped working at that time due to pain in her knees and lower back.
3. Petitioner's medical diagnoses include: osteoarthritis of both knees, degenerative disc disease in lower back, hypertension, Type 2 diabetes, anxiety, and intracranial meningiomas.
4. Petitioner suffered a stroke in 2019 and subsequently underwent two gamma knife radiosurgeries to correct meningiomas found in her brain. She undergoes an MRI every year to monitor her
5. As a result of Petitioner's medical conditions, she experiences pain in her knees and lower back, has some challenges with balance, difficulty climbing stairs and getting in and out of vehicles, difficulty lifting and carrying, inability to stand for extended periods of time, a need to change positions frequently to remain comfortable, has frequent headaches, and has reduced vision in her left eye.
6. The highest level of education that Petitioner has attained is the tenth grade. one year of post high-school education.
7. Following review of Petitioner's application and supporting materials as well as medical records and the report of a physician who performed a consultative exam, the Disability Determination Bureau (DDB) concluded that Petitioner retained the ability to perform light work and that she has some non-exertional limitations (e.g., limitations related to balancing, stooping, kneeling, and crouching).
8. On March 10, 2023, the Disability Determination Bureau (DDB) sent a notice to Petitioner informing her that she was found to be not disabled and that she was not eligible for Medicaid based on disability.
9. On April 18, 2023, Petitioner requested reconsideration of the agency's denial.
10. On May 23, 2023, the agency denied Petitioner's request for reconsideration and forwarded her file to the Division of Hearings and Appeals.

DISCUSSION

In order to be eligible for Medical Assistance (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.

Here, the agency found that Petitioner is not disabled because she retains the ability to perform light work with some non-exertional limitations and that she could perform work despite her proven severe impairments. In other words, the agency found Petitioner to be “not disabled” at Step 5 of the sequential evaluation process. 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 she has severe medical impairments.

Step 3: The DDB found that Petitioner’s conditions do not meet or equal a listed impairment. At hearing, Petitioner offered no argument or 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: Petitioner has an extremely limited work history and the DDB concluded that it was unable to make a finding as to whether Petitioner could perform past relevant work.

Step 5: Generally, an analysis at step 5 includes the application of the Social Security Medical-Vocational Guidelines (also referred to as the residual functional capacity grids) and through the use of a tool known as the “Physical Residual Physical Functional Capacity Assessment” completed by a Medical Consultant employed or contracted by the Disability Determination Bureau. The “grids” are tables that assist in the disability determination process by taking into account vocational factors including 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.

A person who is age 45 – 49, who has limited education (i.e., has not attained high school degree), who has either no work history or a history of unskilled work, and who maintains the ability to perform either sedentary or 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 Rule 201.18 and Rule 202.17. Light work is defined to include jobs that require lifting no more than 20 pounds at a time with frequent lifting of up to ten pounds and a good deal of 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.

The DDB concluded that Petitioner retains the ability to perform light work and cited Rule 202.17 of the as a framework for finding her to be not disabled. The DDB determined that Petitioner is able to lift 20 pounds; whereas, Petitioner testified that she can lift no more than ten pounds. Petitioner asserted that her treating physician has given her work-related restrictions but the records from Petitioner’s treating physician do not directly address the issue of a lifting restriction. If I credit Petitioner’s testimony, despite the absence of corroborating medical records, she would be considered to be restricted to sedentary work. At her age however, as noted above, the grids still direct a finding of not disabled.

Petitioner pointed out that her treating physician included a note in a May 2023 medical record indicating that “her ability to work at this time is poor especially when it comes to any type of steady hourly persistent work.” That is however a conclusory statement and the record did not provide additional detail regarding why he believes that to be true.

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 because Petitioner has some non-exertional limitations (e.g, “balance issues”). The nature and severity of non-exertional limitations including Petitioner’s balance issues are not however addressed with sufficient specificity in the hearing record. For these reasons, I find that the DDB’s conclusions were reasonable and consistent with the available medical evidence. The DDB’s determination that Petitioner does not satisfy the legal standard for disability is affirmed.

Petitioner may file a new application at any time. Also, if she has additional medical evidence from her treating physician regarding her exertional (e.g., lifting) and non-exertional impairments (e.g., balance difficulties, need to change positions, etc.) that has not been previously offered, she may submit it along with a rehearing request pursuant to the instructions below.

CONCLUSIONS OF LAW

The petitioner is not disabled for MA-Disability purposes.

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).

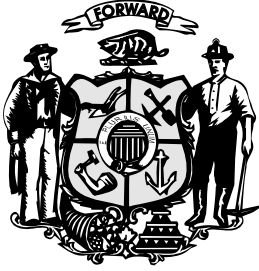
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 15th day of August, 2023



\s _____

Teresa A. Perez
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) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 15, 2023.

Taylor County Department of Human Services
Disability Determination Bureau