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

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In the Matter of

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

**DECISION**  
Case #: MDD - 208892

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on June 5, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson Cty Workforce Developmt Ctr regarding MDD, a hearing was held on July 20, 2023, by telephone.

The issue for determination is whether Petitioner is disabled for purposes of medical assistance disability.

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:

Jefferson Cty Workforce Developmt Ctr  
874 Collins Rd  
Jefferson, WI 53549

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a 29-year-old resident of Jefferson County. (DOB ██████████)
2. Petitioner is diagnosed with epilepsy and depression and anxiety. Petitioner has seizures and frequent headaches.

3. Petitioner completed high school and attended two years of college.
4. Petitioner has been employed at the [REDACTED] for five years and now works part time as a [REDACTED].
5. On December 29, 2021, petitioner filed an initial claim for disability due to anxiety, seizures, headaches, epilepsy, back and neck pain, periventricular gray matter heterotopia and De Quervain's tendinitis.
6. On December 20, 2022, the petitioner was found capable of medium unskilled work and was determined not disabled.
7. On February 20, 2023, petitioner requested reconsideration.
8. On April 14, 2023, Marsha Toll, a consultant with the Disability Determination Bureau (DDB) completed a Mental Residual Functional Capacity Assessment which found that petitioner had moderate limitations in her ability to concentrate, persist or maintain pace and to adapt or manage herself.
9. On April 17, 2023, Marc Young, a consultant with the DDB completed a Physical Residual Functional Capacity Assessment which found that petitioner's application and supporting documentation established that she had functional limitations of 50 pounds occasional lifting and/or carrying and 25 pounds frequently lifting and/or carrying.
10. On or about April 26, 2023, after consideration of additional evidence available since petitioner's initial application, the DDB determined that petitioner's proven limitations were not sufficient to preclude her ability to perform all work and concluded that petitioner retained the ability to perform medium unskilled work, and while there was insufficient information to determine whether she could return to prior relevant work, she could adjust to other types of work.
11. On May 31, 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.

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 provide 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).

In this case, the DDB found that petitioner is not disabled. It initially found she retained the ability to perform medium unskilled work, despite her proven combination of impairments. The DDB denied petitioner's application at step 5. During its initial evaluation, the DDB determined that petitioner retained the abilities to perform unskilled work, at a medium level. In its subsequent evaluation following petitioner's request for reconsideration, the DDB found the same.

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 determination grids to be found “not disabled”. See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at 202.20.

Petitioner stated in her reconsideration request that her condition had changed since her initial claim, in that she was hospitalized due to a seizure and had daily headaches. She stated that her condition made her unable to work full time and unable to transport herself and on days when she had migraines, she was unable to do everyday activities and personal care. She said that a physician ordered that she be restricted from driving for three months. This information was considered.

Petitioner testified at hearing that she works part time, 28 hours per week, during the school year for the ██████████ for five years as a ██████████. She said she has no new diagnoses since the initial denial. She sees a neurologist every three to six months, most recently on July 5, 2023, and is trying to adjust her medication to eliminate seizures. She said that she has seizures about three times per month, most recently on June 29, 2023, in a cluster pattern. She said that she also went to part-time work to reduce stress to have fewer seizures. She said that other times she tries to push through and sometimes misses work due to seizures.

The record contains medical evidence of Medically Determinable Impairments, specifically found epilepsy (Severe), depressive, bipolar and related mental disorders (severe), migraine (not severe) and anxiety and OCD mental disorders (severe.) The agency's considered petitioner's stated position, that she has numerous physical and psychological limitations on activities of daily living, but also that she had no problem most of the time unless having a seizure. At reconsideration petitioner alleged daily headaches and improvement in seizure activity in a less stressful work environment. She reported seizures about 1 to 3 times per month. The agency found that all exam findings were normal at that time and concluded that petitioner's statements about her limitations and level of functioning are found to be partially consistent with medical evidence.

The agency explained to petitioner that her condition resulted in some limitations in her ability to perform work- related activities. It determined that her condition is not severe enough to keep her from working. It considered medical and other information, and her age and education, in determining how her limitations affect her ability to work. It stated that it did not have sufficient vocational information to determine whether she can perform any of her past relevant work, however, based on the evidence in the file, it determined that she could adjust to other 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 medium work level. The DDB's determination that she is not disabled is affirmed.

### CONCLUSIONS OF LAW

Petitioner is not disabled as required for MA eligibility.

**THEREFORE, it is** **ORDERED**

That the petition for review 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, 5<sup>th</sup> 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).

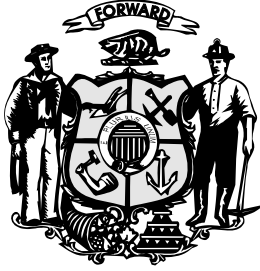
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 22nd day of August, 2023



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Beth Whitaker  
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 August 22, 2023.

Jefferson Cty Workforce Developmt Ctr  
Disability Determination Bureau