



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

In the Matter of

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

AMENDED DECISION
Case #: MDD - 207614

PRELIMINARY RECITALS

Pursuant to a petition filed on February 6, 2023, 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 March 8, 2023, by telephone.

The issue for determination is whether Petitioner is disabled for purposes of the MAPP program.

THIS DECISION WAS AMENDED TO DELETE A FINDING OF FACT RELATING TO PAST EMPLOYMENT THAT WAS ERRONEOUSLY INCLUDED BY THE ALJ IN THE INITIAL DECISION.

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:

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

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County.
2. Petitioner is 30 years old. She has completed a technical college certificate in health office professional studies.
3. Petitioner presently works as a quality inspector working 15 hours per week at \$16.30 per hour. She has worked there for one year. Prior to that she worked as a production worker at 20 hours per week at a rate of \$11-12 per hour. She worked there for four months.
4. Petitioner has diagnoses that include uncontrolled diabetes, right eye blindness (resulting from Diabetes), learning/cognitive disorder, and diabetic neuropathy among others. Petitioner has a full-scale IQ of 73. She has a history of learning challenges and special education classes in school.
5. Petitioner drives during the daytime, but cannot drive after dark.
6. Petitioner filed a Medicaid Disability Application on or around 1/16/20.
7. She filed for reconsideration on 1/16/21.
8. Her denial was affirmed by the DDB after reconsideration on 11/30/22.

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, after consideration of mental and physical functional capacity that she retained the abilities to perform unskilled work.

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 continue in the workforce. The focus of the hearing testimony, however, was on petitioner's need for health insurance as a means of furthering her health and diabetes control. Testimony established that she is limited in work due to not being able to drive at night, or by not being able to work on her feet for long periods.

I am convinced that she is limited in the jobs she can do and faces risks due to her health conditions. But, I am not convinced that she is disabled. "Disability" has a definition under the law. As much as I think it is a good thing for petitioner to have health insurance, I cannot simply call her disabled to make that happen.

CONCLUSIONS OF LAW

1. Petitioner is not 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 dismissed.

REQUEST FOR A REHEARING

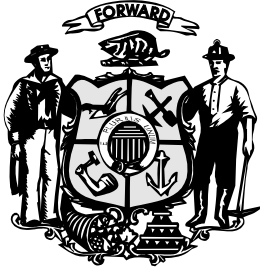
You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

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).



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 24, 2023.

La Crosse County Department of Human Services
Disability Determination Bureau