



FH

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MDD - 213268

PRELIMINARY RECITALS

Pursuant to a petition filed on May 2, 2024, 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 its agents, regarding the cessation of Medical Assistance – Disability coverage. The matter was previously set for hearing on May 29, 2024, June 26, 2024, and June 29, 2024. The first two dates were rescheduled. The petitioner ultimately failed to appear at the time set for the hearing on June 29, 2024, and his appeal was dismissed as abandoned on July 1, 2024. On July 31, 2024, the petitioner requested a rehearing asserting that he did not intend to abandon his hearing. On August 1, 2024, an ORDER was issued granting the petitioner a rehearing. On August 28, 2024, the hearing was finally held, by telephone.

The issue for determination is whether the Department, by the Disability Determination Bureau, correctly determined that the petitioner is no longer disabled under the Medical Assistance Program and terminated his eligibility as “not disabled.”

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: No Appearance
Disability Determination Bureau
c/o Milwaukee County Department of Human Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a ■ year-old single resident of Milwaukee County. He is apparently not a high school graduate, having had his awarded high school degree reversed post-graduation because school records indicate that he did not complete the full required number of classes and credits. He does not have a general equivalency degree either.
2. On or about November 3, 2023, the petitioner was found in his home by members of his extended family; he was confused and unkempt; he was taken by them to the local emergency room where he was found to be attentive, alert and cognitively intact upon examination.
3. The petitioner was hospitalized on November 3, 2023, for treatment of recurrent unstable brachycardia (with subsequent arrest event on November 8, 2023), pneumonia, acute hypoxia, acute kidney injury (AKI), deep venous thrombosis (DVT), and bilateral gangrene. He was noted to have shortness of breath and tachypnea. He was treated at the hospital through at least December 22, 2023.
4. On or about December 8, 2023, the petitioner filed an application for Medical Assistance – Disability benefits. The petitioner began receiving MA-Disability benefits on December 8, 2023, as “presumptively disabled”, pending a final determination of disability.
5. On or about December 22, 2023, he was discharged to a rehabilitation hospital for follow-on cares. This rehabilitation stay continued until about January 5, 2024, when he was discharged.
- 6.
7. His asserted disabling conditions at application included acute kidney injury (AKI) requiring dialysis, deep venous thrombosis (DVT), pulmonary embolism, anemia, recurrent unstable brachycardia with an arrest event on November 8, 2023, bilateral toe ischemia/peripheral vascular disease and gangrene with subsequent bilateral amputation of both big toes consequent.
8. The Disability Determination Bureau reviewed the petitioner’s clinical record in February, 2024, and found that he only had remaining deficits of weakness in his right shoulder and healing incisions from bilateral big toe amputations. The Medical examination report (MER) suggests that 12 months after the onset of disability the petitioner would be capable of “light work” as defined in the Social Security regulations.
9. The reviewing disability examiner found that the “58yro claimant has MDI [i.e., medically determinable impairments] that are severe but do not meet or equal a listing. His MDIs limit him to sustaining Light (20/10/6/6) work. However, the claimant has past work that falls within this RFC to perform as he described it. The claim is denied to past work as he performed it.” See, the DDB file, attached *Disability Determination Explanation* at p. 4. See, also the determination that he met “Regulation Basis Code N31 – Capacity for Substantial Gainful Activity (SGA) – Any Past Relevant Work.” See, the DDB file, attached *State of Wisconsin Disability Transmittal* for State App. No. XXXXXX4579. (Four digits omitted for security purposes.)
10. The disability examiner reviewed the medical examination report conducted by assigned medical officers (P. Chan, M.D. and M. Korshidi, M.D.) based on the clinical evidence from the petitioner’s medical providers, and the clinical evidence, and created a Residual Functional Capacity report finding the petitioner could lift 20 lbs. occasionally; 10 lbs. frequently; stand and/or walk with normal breaks for more than 6 hours on a sustained basis in an 8 hour workday; sit with normal breaks for more than 6 hours in an 8 hour workday; and he presented with unlimited push/pull skills in upper and lower extremities other than lift and/or carry. The examiner also noted that the petitioner has no

postural limitations, manipulative limitations, vision limitations, communicative limitations, or any environmental limitations. See, the DDB file, attached *Disability Determination Explanation* at pp. 6-7. He had no mental functional deficits. See, *ibid*, at p. 7.

11. MA – Disability benefits were terminated because the Department’s Disability Determination Bureau concluded on or about February 12, 2024, that the petitioner’s condition had improved and his disability status ceased. See, DDB File, attached *MA Disability Denial Notice Letter*, dated February 12, 2024.
12. The petitioner requested reconsideration of the DDB’s discontinuance of his MA-Disability on February 26, 2024, but, but the DDB affirmed the denials on April 25, 2024 and referred the case file to the Division of Hearings & Appeals to establish a fair hearing file on the petitioner’s behalf as is the standard practice for the Department.
13. The petitioner has worked full-time as a private security guard from approximately 2000 through at least October, 2023. He worked in the past as a security guard for a large apartment complex, checking in visitors, making rounds of interior and exterior on foot, answering phone calls regarding suspicions activities, de-escalating disputes between tenants and visitors, and delivering packages.
14. As of March 1, 2024, medical records indicated that the petitioner amputations have completely healed. He was negative for cardiac or neuro symptoms, with BP of 146/82, pulse rate of 56. He was negative for chest pain, palpitation, dyspnea on exertion (DOE) or edema. His weak right shoulder was more prominent on abduction but he was back to weight lifting and it does not cause pain. No weakness in any other parts of his body were found. See, the DDB file, attached *Disability Determination Explanation* at p. 7. And see, DDB file, attached Ascension medical report of March 1, 2024.
15. At present, the petitioner reports that he works 15 - 22.5 hours per week as a private security guard, i.e., 2- 3 days per week in 7.5 hours shifts. He is performing the same work as he has in the past for the same security company. He chooses to accept two to three 7.5 hours shifts per week, having determined that this is the level he is comfortable performing with his medical deficits and conditions. He was earning \$21.50 per hour in December, 2023, as a private security guard for the same employer as at the present time. See, DDB File, attached *Work History* dated December 27, 2023. This means he works about 75 hours per month, at about \$21.50 per hour for gross wages of \$1,612.50
16. There are no Social Security Administration disability determinations that are known to exist in the 12 months prior to the Department’s disability cessation date of April 25, 2024.

DISCUSSION

To be eligible for MA, an adult male under age 65 must be disabled, blind, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. See, 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, he is found to be not disabled without further review. The income level to be considered substantially gainful currently is \$1,550; it was \$1,470 in 2023. Currently petitioner is not working at the level of substantial gainful employment because his monthly income is less than \$1,550. Here, the agency conceded at the time of the denial that he was not working at a level above this SGA. It appears that he may be now. In any event, for purposes of this decision I will find that the DDB did not find him to be working at the level of substantial gainful employment. He meets step one. If he is not substantially employed, the DDB must determine if he 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 found that petitioner has at least one severe impairment. He meets step two.

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). Petitioner could fall within listings 1.20 (Amputation due to Any Cause) or 4.01 – 4.12 (Cardiovascular System – Adult [Acute Myocardial Infarction.]) See, the Adult Listings, Part A, [1.00 Musculoskeletal Disorders - Adult \(ssa.gov\)](#) . And see, *ibid*, Part A, sections 4.01 – 4.12.

The amputation listing requires either, as relevant here, amputation of one or both lower extremities occurring at or above the ankle, with complications that lasted for a continuous period of at least 12 months (or could be expected to do so) and medical documentation of the same. Or in the alternative, soft tissue injury under continuing surgical management or non-healing or complex fractures of the femur, tibia, pelvis or one or more of the talocrural bones. The petitioner’s amputations were limited to his big toes, and the medical records establish that these sites have healed well and he is ambulating well.

Likewise, while his blood pressure could be fairly termed high or above normal when examined in March, 2024, the conditions presented in that examination are nowhere near the level of severity required by any of the 12 cardiac sub-listings. The evidence in this record does not support a finding that he meets or equals any listed cardiovascular impairment criteria such as to be disabled.

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. 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.

Here, the Disability Determination Bureau determined that that he met “Regulation Basis Code N31 – Capacity for Substantial Gainful Activity (SGA) – Any Past Relevant Work.” See, the DDB file, attached *State of Wisconsin Disability Transmittal*. In short, the agency review concluded that the petitioner retained the capacity to engage in his past work at a substantially gainful employment level. Based upon Findings of Fact Nos. 9-14, above, and the documents referenced therein, I completely concur. The petitioner’s condition has improved since presumptive disability status was granted; he has not shown that the Social Security Administration has found him disabled; and his present condition is such that he can return to his past work. In addition, he has done so on his own terms, limiting his hours per week. Based upon the clinical record here, I conclude that the agency correctly determined he is able to perform his past work and it discontinued his MA – Disability for this reason.

CONCLUSIONS OF LAW

That the Department's Disability Determination Bureau correctly discontinued the petitioner's MA – Disability on February 12, 2024, and again on reconsideration on April 25, 2024, as he does not meet the definition of disability for MA because he has regained the capacity to perform his past work.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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.

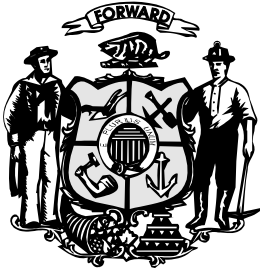
APPEAL TO COURT

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 6th day of September, 2024

\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 September 6, 2024.

Milwaukee Enrollment Services
Disability Determination Bureau