



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: MDD - 212595

PRELIMINARY RECITALS

Pursuant to a petition filed on March 12, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Wood County Human Services - WI Rapids regarding Medical Assistance (MA), a hearing was held on April 17, 2024, by telephone.

The issue for determination is whether petitioner meets the legal standard for disability required to establish MA 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:

Wood County Human Services - WI Rapids
111 W Jackson St
Wisconsin Rapids, WI 54495

ADMINISTRATIVE LAW JUDGE:

Beth Whitaker
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a 29 year old resident of Wood County.
2. On August 11, 2020 petitioner applied for Medical Assistance (MA) – disability benefits.

3. Petitioner asserts that she is disabled due to medical diagnoses that include PTSD, bipolar I, schizoaffective disorder, paranoia, social anxiety and right knee surgical pain.
4. Since February 14, 2023 or earlier, petitioner has received mental health treatment from a number of providers for the psychiatric conditions she alleges.
5. Petitioner graduated from high school and took one college course. She most recently worked as an assembler.
6. In November 2023, medical and mental health consultants with the Disability Determination Bureau (DDB) physical and mental residual functional assessments and . found that even with petitioner's limitations she was capable of meeting the basic mental demands of unskilled work.
7. On December 4, 2023, the agency issued to petitioner a Medicaid-Disability Determination Notice, informing her that she did not qualify for Medicaid-Disability because her condition does not meet the disability requirements of Social Security law and regulations.
8. On January 17, 2024, petitioner requested reconsideration of the agency's denial. She stated in the request that there had not been a change in her condition and that she did not have a new illness or injury since she filed the initial request for MA disability.
9. The agency obtained and reviewed additional medical records.
10. On March 1, 2024, a mental health consultant with the DDB concluded that petitioner's mental health impairments do not meet or equal a listing. Listings schizophrenia spectrum and other psychotic disorders (12.03), anxiety and obsessive-compulsive disorders (12.06), and trauma and stressor related disorders (12.15) were found. It was noted petitioner had moderate limitations in some abilities and no significant limitation in others. The examiner found that even with petitioner's limitations she was capable of performing work that does not require changing tasks on a day-to-day basis but rather has a fairly regular set of job duties involving no more than occasional decision-making.
11. On March 1, 2024, a medical consultant with the DDB completed a Physical Residual Functional Capacity Assessment. Petitioner reported no current knee pain following surgery in 2021 – 2022, as able to walk 1 mile and sit for 30 minutes and had mild range of motion loss, was obese and had a history of sleep apnea. The consultant found that petitioner had no severe physical impairments.

DISCUSSION

In order to be eligible for 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 provides 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).

Here, the DDB found that petitioner is not disabled. Initially and on redetermination it found that she retained the ability to perform unskilled work without physical limitations. This was despite her proven combination of impairments. An application of the five-step sequential disability evaluation process follows.

In step one, the agency found that petitioner was not engaged in substantial gainful activity. She testified that she last worked two years ago and has not attempted to work since then. In step two, the agency found that petitioner's impairments are severe. I have no evidence to the contrary.

In step three : The DDB found that petitioner's conditions do not meet or equal a listed impairment. The listings for mental impairments require loss of cognitive functioning leading to one extreme or two marked areas of impairment in daily living and functioning. See Listings 12.06, 12.03, and 12.15. While petitioner clearly has deficits, they are not at the level necessary to meet or equal the listings. As such, she is not entitled to a finding of disability at this step.

Step four involves determining whether petitioner can perform past relevant work. DDB bypassed this step of the process because it found that a finding of "not disabled" was appropriate based on petitioner's age, education and residual functional capacity, regardless of past work.

In step five, the agency denied petitioner's application. During its initial evaluation, the DDB determined that petitioner retained the abilities to perform medium unskilled work with no physical limitations. In its subsequent evaluation following petitioner's request for reconsideration, the DDB reached the same conclusion.

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 grids to

be found “not disabled”. See, 20 C.F.R. Ch. III, Part 404, Subpt. P, App.2, at 202.20. The grids also direct a finding of “not disabled” for individuals 45-49 who are limited to sedentary work despite their impairments, who are high school graduates or more, and who have skilled or unskilled work histories. Id. at 201.18. Light work includes jobs that require lifting no more than 20 pounds at a time with frequent lifting of up to 10 pounds and a good deal of walking or standing and/or some pushing and pulling. Sedentary work includes jobs that require lifting of no more than 10 pounds at a time and occasional walking and standing. See 20 C.F.R. §404.1567.

Petitioner testified that she cannot work because of extreme social anxiety, bipolar 1, PTSD, depression, schizoaffective disorder and type 2 diabetes. She said that when she is in a public place, she has a panic attack, goes into psychosis and has to be hospitalized. She testified that she does not do personal care like bathing well, is sometimes suicidal had has difficulty concentrating. She testified that she last worked as an assembler about two years ago. The work ended because she was psychotic and stopped going to work without notifying the employer and was terminated. She testified that she has not sought employment since then. She testified that she was recently diagnosed with type 2 diabetes. She said that it causes blurred vision and thirst.

In the record are mental and physical capacity forms filled out by DDB experts. They conclude that while petitioner has significant limitations, she is nevertheless still able to work in the community. I must give those conclusions due weight in the absence of conflicting expert opinion. There is insufficient medical documentation in the record to rebut the DDB’s ultimate finding that she is physically and mentally able to perform medium unskilled work. There is no evidence in the record contradicting the agency’s finding that in spite of her impairment petitioner is capable of performing unskilled 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, primarily mental health conditions 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 petitioner’s 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).

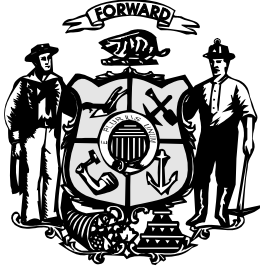
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of May, 2024



\s _____

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 May 14, 2024.

Wood County Human Services - WI Rapids
Disability Determination Bureau