STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County	District Hearings Section	Assistance Group Name		Assistance Group Number
LOGAN	COLUMBUS			
Place of Hearing	**Initial Hearing Date**	**Rescheduled Postponed to**	**Rescheduled Postponed to**	**Rescheduled Postponed to**
LOGAN CDJFS	11/17/2004	01/18/2005	01/18/2005	12/14/2004

Appellant/Representative	Appellant Representation
	Local Agency Representation
	Patty Furrow, Supervisor, LCDJFS; Ronald Alexander, County Medical Services

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS	Date Appeal Summary Received	Date Scheduling Notice Mailed
10/14/2004		10/25/2004	11/01/2004	01/06/2005

Appeal Number(s)/Program(s)
1198027/DFA, 1199484/MED

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE SECTION:

1. By notice mailed on 10-21-04, the Logan County Department of Job and Family Services (Agency) denied the Appellant's application for Medicaid for the Disabled. The denial was based on a finding of non-disability by County Medical Services (CMS) due to lack of medication documentation to evidence a severe condition. After reviewing the evidence and testimony presented at the hearing, the Hearing Officer found that this denial was correct at the time that it was made. However, the Appellant presented additional medical evidence at the state hearing which must be reviewed by CMS in order to determine disability. The Appellant did not meet or equal the social security criteria for impairment of visual acuity which would find her disabled under step 3 of the sequential evaluation process. Therefore, CMS should evaluate whether the Appellant is disabled at either step 4 or step 5 of the sequential evaluation process. Thus, the Hearing Officer recommends that Appeal Number 1199484 (MED) be sustained.

EAF

Appeal(s)	Date Issued	Compliance
SUSTAINED 1198027, 1199484	01/21/2005	1198027, 1199484

Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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2.By notice mailed on 10-21-04, the Agency also denied the Appellant's application for Disability Financial Assistance (DFA). This denial was also based on a finding of non-disability by CMS due to lack of medication documentation to evidence a severe condition. After reviewing the evidence and testimony presented at the hearing, the Hearing Officer found that this denial was correct at the time that it was made. However, the Appellant presented additional medical evidence at the state hearing which must be reviewed by CMS in order to determine disability. The Appellant did not meet or equal the social security criteria for impairment of visual acuity which would find her disabled under step 3 of the sequential evaluation process. Therefore, CMS should evaluate whether the Appellant is disabled at either step 4 or step 5 of the sequential evaluation process. Thus, the Hearing Officer recommends that Appeal Number 1198027 (DFA) be sustained.

PROCEDURAL MATTERS:

1. The Appellant's written requests for a state hearing were received by the Ohio Department of Job and Family Services (ODJFS), Bureau of State Hearings on 10-25-04 and 11-1-04.
2. The state hearing was scheduled to be heard on 11-17-04 for Appeal Number 1198027 only. The state hearing was rescheduled to be heard on 12-14-04 to include both appeal numbers, however, the Appellant did not appear for the state hearing. The District Hearing Authority found good cause for the Appellant's absence and the state hearing was rescheduled and heard on 1-18-05.

3. All witnesses were sworn in by the Hearing Officer.

4. CMS prepared an appeal summary which was received by the Hearing Officer on 11-01-04. The CMS appeal summary was also received by the Appellant prior to the state hearing. The Appellant provided documentation to the Hearing Officer at the time of the state hearing. All documents received by the Hearing Officer were reviewed and entered into the hearing record in their entirety.

FINDINGS OF FACT:

1. The Appellant is a 55-year old single woman. The potential Medicaid for the Disabled (MA-D) and Disability Financial Assistance (DFA) assistance groups (AGs) consisted of the Appellant only. The original application date for this case was 12-9-03. The case was submitted to CMS on 5-11-04, deferred on 8-9-04, re-submitted on 9-20-04, and denied by CMS on 9-24-04.

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2. CMS denied a finding of disability on 9-24-04 (Exhibit M) because of a "lack of medical documentation needed to show the severity of the condition." (Exhibit C-3)

4. The status of the Appellant's application for disability at the social security administration was pending the appeals process.

5. The "Basic Medical" form (Exhibit K) dated 3-3-04, listed the following diagnoses: cataracts. The "Basic Medical" form does not identify whether the Appellant is employable or not employable.

6. The Appellant is 5'0" tall and weighs about 180 lbs. The Appellant quit smoking cigarettes on 9-22-04. The Appellant does not drink or use illegal drugs.

7. The Appellant is independent in the areas of mobility and self-care.

8. By notice mailed on 10-21-04, the Agency denied the Appellant's application for Medicaid for the Disabled (MA-D). The denial was based on a finding of non-disability by County Medical Services (CMS).

9. The Appellant's visual acuity is 20/120 in her left eye, and 20/200 in her right eye. (Exhibit 2-1) The Appellant cannot see to drive.

10. On 9-27-04, the Ohio Rehabilitation Services Commission closed the Appellant's case because she had "health issues that need to be addressed, and [is] not able to participate in services at this time." (Exhibit 4-2)

11. The Appellant fell and was injured on a job on 10-9-03. The Appellant was determined to be 22% disabled as a result by the Ohio Rehabilitation Services Commission. The Appellant received a workers compensation settlement as a result of this injury.

12. The Appellant's work history is in institutional food preparation and service. The Appellant would like to return to this employment.

CONCLUSIONS OF POLICY:

Policy

1. Ohio Admin. Code § 5101:1-39-03 (2002) states that a limiting physical factor is a basic requirement in the medicaid program. Paragraph (A) states that the limiting physical factor may be met must be met by age (65 or older), blindness or disability. "In order for the limiting physical factor to be met by disability, the individual must:

(1) Be in receipt of RSDI or SSI (based on his the individual's own disability); or
(2) Be determined presumptively disabled by the CDJFS as stated in rule 5101:1-39-03.1 of the Administrative Code; or
(3) Have an SSI claim pending and be determined eligible by the county medical services section (CMS) as stated in rule 5101:1-39-032 of the Administrative Code."

2. Ohio Admin. Code § 5101:1-39-03.2 (2002) states that the determination of disability by CMS must be based on the SSI requirements specified in the Code of Federal Regulations (CFR) at §20CFR416.901 to 416.998. Title 20 of the CFR at sections 404.1520 et. al. further states how evaluations for SSI determinations are to be made. The determination under the social security regulations requires that there be a determination of whether an individual has a severe impairment or combination of impairments that are substantiated by objective medical documentation which shows the impairment will last at least 12 continuous months or result in death.

3. The CMS determination under the SSI regulations at 20CFR416.920 involves a multi-step sequential process. First, CMS must determine if the individual is employed. If the individual is employed, then regardless of his physical or mental condition, disability cannot be found. Second, if the individual is not employed, CMS must determine if he has a severe impairment or combination of impairments that significantly limits physical or mental ability to do basic work activities. Third, CMS must determine if the impairments or combination of impairments meets or equals any impairment criteria listed in the regulations at Appendix A (i.e. specific parts of the body wherein the impairment must meet the specific objective medical criteria outlined). If the individual does have an impairment or combination of impairments that meets or equals one of the impairment criteria listed in the regulations, CMS must find that the person is disabled for Medicaid eligibility purposes. However, if the individual does not meet this standard, CMS must determine under the fourth step of the evaluation process whether the individual can perform any past relevant work. If the individual can perform any past relevant work, the individual is not considered disabled. However, if the individual cannot perform any past relevant work, the case is moved to the fifth step for a determination of whether the individual can perform any other work in the national economy. If the individual is found to be able to perform any other work in the national economy, the individual cannot receive Medicaid coverage.

4. 20CFR416.927(a) defines severe to mean "an impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities."

5. 20CFR416.929 states that, "Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical

impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged."

6. Ohio Admin. Code § 5101:6-7-01(C)(1) (2003) provides that the Hearing Officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. "It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules."

7. In the DFA program, Ohio Admin. Code (D)(1) § 5101:1-5-01 (2003) states that, "Eligibility for DFA is limited to the following individuals:
(a) An individual who is unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months, as determined by the county medical services section (CMS). The disability determination process is set forth in rule 5101:1-5-20 of the Administrative Code.
(b) A resident of a residential treatment center certified as an alcohol or drug addiction program by the Ohio department of alcohol and drug addiction services (ODADAS), under section 3793.06 of the Revised Code."
(c) certain individuals sixty years of age or older.

8. 20CFR404.1599, Appendix 1 of Subpart P, Part A (2004) is the "Listing of Impairments" for persons 18 years of age or older. Subsection 2.02 refers to "Impairment of visual acuity." In order to be considered disabled under this section an individual's "remaining vision in the better eye after best correction" must be "20/200 or less."

Analysis

The issue for this decision is whether the CMS denial of a finding of disability for the Appellant, which was the basis for the Agency's denial of Medicaid for the Disabled (MA-D) was correct. By extension then, the next consideration would be whether the CMS determination that the Appellant was not disabled due to a lack of medical evidence was correct. I found that it was correct at the time of the determination. However, the Appellant presented evidence of her visual acuity at the time of the state hearing which is the basis of this determination. In order to be found disabled under the social security regulations as cited, an individual's "remaining vision in the better eye after best correction" must be "20/200 or less." Here, the Appellant's visual acuity in her best eye is 20/120, therefore, she does not meet the listing at step 3 of the sequential evaluation process. As the determination of disability relies on the totality of the 5-step sequential evaluation process, CMS must proceed to determine whether the Appellant met the criteria for disability then under steps 4 and 5. Therefore, these appeals should be

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sustained with compliance to CMS.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the record before me, I find that Appeal Numbers 1199484 (MED) and 1198027 (DFA) should be sustained. In compliance, the Agency should reopen the categories of Medicaid and DFA and allow them to pend, preserving the date of application. CMS should review the Appellant's allegation of disability back to the date of application of 12-9-03. CMS should make a new disability determination using the additional documentation provided by the Appellant at the state hearing and faxed to CMS, and forward the results of same to the Agency. Once the disability determination is received, the Agency should provide written notice to the Appellant of this determination with all appeal rights afforded.

FINAL ADMINISTRATIVE DECISION AND ORDER:

I find that the Hearing Officer's recommendations are supported by policy and the evidence and I adopt the recommendations of the Hearing Officer.
The Medicaid for the Disabled and Disability Financial Assistance appeals are sustained. Compliance is required.
Ohio Admin. Code § 5101:6-7-03(B)(1)(2003) requires compliance within fifteen calendar days from the date the decision issued, but in no event later than ninety days from the date of the hearing request for those decisions involving public assistance, social services or child support services.

APPENDIX:

Agency Exhibits:
A. Agency appeal summary (1 page inclusive)
B. Notice History Detail screens (2 pages inclusive)
C. CMS Appeal Summary (3 pages inclusive)
D. "The Five-Step Sequential Evaluation Process" (1 page inclusive)
E. "Disability Determination Process for New Applicants" (5 pages inclusive)
F. JFS Form 3605, "CDJFS Referral to CMS," dated 5-11-04 (1 page inclusive)
G. JFS Form 3605, "CDJFS Referral to CMS," dated 6-3-04 (1 page inclusive)
H. JFS Form 3605, "CDJFS Referral to CMS," dated 6-9-04 (1 page inclusive)
I. JFS Form 3605, "CDJFS Referral to CMS," dated 9-20-04 (1 page inclusive)
J. JFS Form 7004, "Social Summary Report for Disability Determination" dated 2-20-04 (2 pages inclusive)
K. . JFS Form 7302, "Basic Medical," dated 3-3-04 (2 pages inclusive)
L. ODHS Form 3600, "County Medical Services Disability Determination," dated 8-9-04 (1 page inclusive)
M. ODHS Form 3600, "County Medical Services Disability Determination," dated 9-24-04 (1

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page inclusive)
N. Records from scan of legs for DVT dated 5-25-04 (2 pages inclusive)
O. Letter from Agency to Dr. Terabuh dated 2-20-04 (1 page inclusive)
P. Fax cover sheet (1 page inclusive)
Q. "Authorization for Release of Use of Protected Health Information" (1 page inclusive)
R. CMS Checklist for Agency (1 page inclusive)
S. "Authorization for Release of Use of Protect Health Information" (1 page inclusive)
T. Mary Ruttan Hospital billing record (1 page inclusive)
U. Notice of SSA telephone appointment dated 5-24-04 (2 pages inclusive)
V. "The Five-Step Sequential Evaluation Process" (1 page inclusive)
Appellant Exhibits:
1. Social Security application receipt (1 page inclusive)
2. Vision Center of Central Ohio "Clinical Evaluation" dated 4-28-04 (3 pages inclusive)
3. Vision test results (2 pages inclusive)
4. Letter form Ohio Rehabilitation Services Commission dated 9-27-04 (3 pages inclusive)

Date Issued: 01/21/2005