

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES  
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1252005	MED	SUSTAINED
1266792	DFA	SUSTAINED
Compliance Required		
Decision Date:	01/13/2006	
Request Date:	10/17/2005	
Hearing Officer:	GEOFF BROWN	

State Hearing Decision

**ISSUE SECTION**

**Appeal No.1252005 Medicaid (MA-D):** On 10/14/05, the County Department of Job and Family Services (CDJFS) mailed the Appellant notice of termination of his Medicaid for the disabled (MA-D) benefits. The reason for this action was a 9/22/05 determination by the ODJFS County Medical Services (CMS) unit that the medical evidence submitted for the Appellant was insufficient to establish a new or continuing disability. At the hearing it was established that the Appellant had not been assisted to obtain a full mental status evaluation. As the basis of the Appellant's previous disability was due to mental impairment, his ability work could not be properly assessed by CMS. The termination was therefore incorrect.

**Appeal No.1266792 DFA:** On 10/14/05, the CDJFS mailed the Appellant notice of termination of his disability financial assistance (DFA) benefits. The reason for this action was a 9/22/05 determination by the ODJFS CMS unit that medical evidence submitted for the Appellant was insufficient to establish a new or continuing disability. DFA requires a finding of disability by CMS as a condition of eligibility. At the hearing it was established that the Appellant had not been assisted to obtain a full mental status evaluation. As the basis of the Appellant's previous disability was due to mental impairment, his ability work could not be properly assessed by CMS. The termination was therefore incorrect.

**PROCEDURAL MATTERS**

This appeal was received by the Bureau of State Hearings on 10/17/05. The hearing was scheduled to be held at the CDJFS on 11/22/05, and was duly conducted on that date. Benefits were continuing at the time of the hearing. The Appellant attended the hearing and represented himself. CMS was not represented, but submitted a detailed appeal summary, which had been mailed to the Appellant prior to the hearing. The CDJFS was represented by Laurie Gribble, Case Manager, and by Ray Strischek, Income Maintenance Worker. The Hearing Officer conducted the proceeding by speaker telephone from the Columbus regional hearings office. All parties were sworn in by the Hearing Officer. Testimony was taken and documents were accepted and identified as Exhibits. Based on the evidence, the Hearing Officer made the following findings of fact.

## STATE HEARING DECISION CONTINUATION

### FINDINGS OF FACT

- (1) On 7/25/02, the Appellant's disability was approved by CMS with a continuing disability review (CDR) date of July 2003.
- (2) On 3/18/04, CMS approved a further period of disability, with a new CDR date of 2/28/05.
- (3) On 2/1/05, the CDJFS submitted a new disability case to CMS.
- (4) On 2/7/05, CMS deferred the case back to the county with a request for additional information, including a current full mental status evaluation.
- (5) On 4/15/05, the CDJFS resubmitted the case to CMS with no new information.
- (6) The Appellant's disability case was evaluated in its entirety using the five-step sequential evaluation process for new allegations of disability and the seven-step CDR process for the previously identified medical condition.
- (7) On 9/22/05, the Appellant's allegations of disability were denied due to insufficient medical documentation to establish severity.
- (8) On 10/14/05, the CDJFS mailed the Appellant notice of termination of his Medicaid MA-D and of his DFA cash assistance.

### CONCLUSIONS OF POLICY

The Appellant's right to appeal the CMS determination is established in Ohio Administrative Code § 5101:1-5-20 (E) (7) (d) (2003), "The disability determination process," states that "Any decision made by CMS is subject to all hearing and appeal rights in accordance with Chapters 5101:6-1 through 5101:6-9 of the Administrative Code." The Appellant's most recent disability submission included new allegations of disability, but no information on the allegations of continuing disability on which he was previously approved. The new allegations, heart problems, cirrhosis, and hip, back, knee and foot pain, were evaluated by the five-step sequential evaluation process used to make initial disability determinations. The allegation of mental impairment was evaluated using the seven-step CDR process.

In regard to the allegation of heart problems, the Appellant does have a history of heart attack and continues under the care of a cardiologist. Specific conditions in the Appellant's history of cardiac events include congestive heart failure, atrial fibrillation, ventricular tachycardia with an internal defibrillator implant, ischemic cardiomyopathy with left ventricle dysfunction, hypertension, dyspnea and hyperlipidemia. However, the CMS reviewer emphasized that the Appellant's cardiologist stated in the Basic Medical, Exhibit (G), that he was employable. The CMS reviewer further noted that there were no lab results to support the allegation of heart problems due to heart problems, except for limited pre-operative tests performed when the Appellant had knee surgery.

The only available medical information dealing with the allegations of hip, back, knee and foot pain dealt with arthroscopic surgery on the Appellant's right knee in December of 2004. Post operative notes indicate the Appellant was doing well and had no complaints. The reviewer also stated that SSA guidelines do not recognize arthroscopic surgery on the knee as resulting in

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disability of 12 months or longer. There were no laboratory results of any kind regarding the allegation of cirrhosis, a condition which is confirmed by blood testing and liver biopsy. All new allegations of disability were denied at step two of the five-step process because there was insufficient medical data to establish the conditions as severe enough to limit the Appellant's ability to work.

The CDR process is designed to evaluate the alleged disabling condition, relative to earlier findings, to assess whether there has been any improvement in the individual's functioning, whether the condition has caused further deterioration of the individual's health, or whether the condition and limitations remain the same. The Appellant's earlier findings of disability were based on a mental impairment. However, no evidence was included in the present case to indicate the Appellant is receiving counseling or taking any psychotropic medications. The allegation of continuing disability was therefore denied because of insufficient information to determine if the disability continues.

At the hearing, the Case Manager said that the Appellant mistakenly took the Basic Medical and Mental Functional Capacity Assessment form to his cardiologist, who quite reasonably declined to fill out the Assessment form. The Case Manager then provided the Appellant with a second set of forms. The Appellant's primary care physician completed another Basic Medical on 2/4/05. This one indicates the Appellant is unemployable for twelve months or longer, and requests further diagnostic evaluation by the Appellant's cardiologist. The Case Manager submitted the new Basic Medical to CMS on 4/21/05. The Case Manager stated that she had been unaware of the Appellant's history of psychological problems and had not requested any documentation of that aspect of the Appellant's medical history. The Mental Functional Capacity Assessment form was given to the Appellant by the IMW, and that was taken to the cardiologist, who would not fill it out. The Appellant's case record includes a mental status examination completed by a psychologist at the local community mental health clinic 5/9/03. This examination report, which diagnosed the Appellant as suffering from major depression, resulted in a one-year finding of disability.

Ohio Administrative Code § 5101:1-39-03 (2005), "Medicaid: limiting physical factor," requires the Agency to assist the individual in developing the disability record for submission to CMS. Despite the Appellant's extensive history of heart problems, his disability has been based on mental, rather than physical problems. The CDJFS did not identify and address the Appellant's history of depression in developing the case record. Without a full mental status report completed by a psychiatrist or Ph.D. psychologist, the Appellant's limitations cannot be adequately evaluated. The Appellant also identified generalized orthopedic complaints, and has a history of knee surgery. At the close of the hearing, the Appellant submitted a note, Exhibit (2), from another local physician, which stated that he had experienced multiple heart attacks and is totally and permanently disabled.

### **HEARING OFFICER'S RECOMMENDATION**

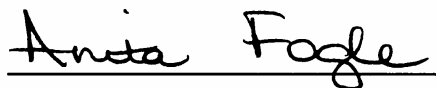
**Appeal No.1252005 Medicaid (MA-D) & Appeal No.1266792 (DFA):** Based on the record and the policy before me, I recommend the appeals be sustained. The CDJFS should be directed to arrange an appointment for a full mental health status evaluation and an examination by an orthopedic surgeon, and resubmit the Appellant's case to CMS for reconsideration. The Appellant will retain full appeal rights on the subsequent determination.

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**FINAL ADMINISTRATIVE DECISION AND ORDER**

I find the Hearing Officer's conclusions to be supported by the cited policy and by the evidence. The recommendations are therefore adopted and the appeals are sustained with compliance is required.

Ohio Admin. Code § 5101:6-7-03 requires compliance be achieved for decisions involving public assistance, social services or child support services within fifteen calendar days from the date the decision is issued, but in no event later than ninety calendar days from the date of the hearing request. Compliance shall be promptly reported to the bureau of state hearings, ODJFS, via "State Hearing Compliance," JFS 04068, accompanied by appropriate documentation to show that compliance has been achieved.



Anita Fogle, CHO  
Hearing Authority

January 13, 2006

**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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 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 Bureau of State Hearings 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.

**Aviso a la Apelante**

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

**STATE HEARING DECISION CONTINUATION**

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

**Appendix**

**Appellant Exhibits**

- (1) JFS 04069, State Hearing Request.
- (2) Note from Appellant's physician.

**Agency Exhibits**

- (A) DHS 4067, Appeal Summary, with attached two-page chronology;
- (B) ODHS 3600, County Medical Services Disability Determination.
- (C) Letter, dated 11/1/05, from CMS to the Appellant.
- (D) CMS Appeal Summary; three pages.
- (E) ODHS 3605, CDHS Referrals to CMS; three pages.
- (F) ODHS 7004, Social Summary Report; two pages.
- (G) ODHS 7302, Basic Medical Reports; four pages.
- (H) ODHS 7308, Mental Functional Capacity Assessment; two pages.
- (I) ODHS 3606, Physician Certification of Medication Dependency.
- (J) ODHS 3600, County Medical Services Disability Determination; two pages.
- (K) New objective medical documentation; seventeen pages.
- (L) Previous medical documentation; ninety four pages.
- (M) Five-step sequential evaluation process;
- (N) Eight-step CDR Evaluation Process;