

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

In the matter of:

| | | |
|---------------------|-----------------|---------------------|
| <u>Case Number:</u> | <u>County:</u> | |
| 5019384519 | LUCAS | |
| <u>Appeal:</u> | <u>Program:</u> | <u>Disposition:</u> |
| 1295479 | DFA | SUSTAINED |
| 1295480 | MED | SUSTAINED |
| Compliance Required | | |
| Decision Date: | 01/02/2007 | |
| Request Date: | 07/10/2006 | |
| Hearing Officer: | DEMETRA PETROS | |

State Hearing Decision

Issue #1 (Appeal #1295479 – Disability Financial Assistance/DFA)

Issue #2 (Appeal #1295480 – Medicaid/MA-D)

On 07-03-06, the Lucas County Department of Job and Family Services (Agency) proposed termination of the Appellant's Disability Financial Assistance (DFA) and Medicaid for the Disabled (MA-D) effective 07-31-06. The Disability Determination Unit (DDU) found that insufficient medical evidence was submitted, after deferral, to determine the Appellant's physical and/or mental conditions were severe enough to limit his ability to do basic work activities. The Appellant was previously approved for Medicaid and DFA. Medical documentation was gathered and referred to DDU for continuing disability review (CDR). He continues to receive Medicaid and DFA during this process.

Additional medical information was provided at the hearing. DDU agreed to review the newly submitted medical documents and redetermine disability. The Appellant's Social Security Disability (RSDI) and Supplemental Security Income (SSI) claims remain on appeal with the Social Security Administrative (SSA).

Therefore, the Agency's 07-03-06 proposal to terminate the Appellant's Medicaid (MA-D) and Disability Financial Assistance (DFA) effective 07-31-06 are not correct and the appeals are SUSTAINED, with Compliance. The Agency shall forward the additional medical evidence received at the hearing to DDU. DDU shall review the case in its entirety based on the newly submitted medical information.

PROCEDURAL MATTERS

A notice of adverse action was issued 07-03-06. A request for a hearing was received by the Bureau of State Hearings 07-10-06 (See Exhibit #1). Due to a medical hearing scheduling delay, the hearing could not be scheduled until 10-30-06. This scheduling delay prevented the hearing decision from being issued within thirty days of the request date. The hearing was scheduled and conducted as a face-to-face hearing at the Agency on 10-30-06. The Appellant and the following Agency representatives attended the 10-30-06 hearing: Angela Barnett – CDJFS Eligibility

STATE HEARING DECISION CONTINUATION

Specialist and George Long – DDU Medicaid Health System Specialist II. An Appeal summary was received from DDU on 09-18-06 and from the Agency on 10-30-06 (See Exhibit A).

FINDINGS OF FACT

- 1) The Appellant is 48 years old, single and receives Disability Financial Assistance (DFA) and Medicaid for the Disabled (MA-D). On 07-03-02, DDU had approved disability for the Appellant for the period 01-01-02 through 06-30-03.
- 2) On 10-21-04, DDU determined the Appellant was no longer disabled and notified the Agency. The Agency issued a notice 10-25-04 proposing termination of the Appellant's MA-D and DFA. The Appellant requested a hearing 11-12-04.
- 3) A rescheduled hearing was held 03-30-05. The Agency agreed to reinstate the Appellant's DFA and MA-D benefits, obtain additional medical information and resubmit his case to DDU to redetermine disability. Based on this Agency agreement, the Appellant signed a State Hearing Withdrawal Request (See Exhibit O/DDU page 20).
- 4) The Agency reinstated the Appellant's MA-D and DFA effective 03-01-05.
- 5) Medical documents were gathered and were forwarded to DDU, who received them on 05-12-05.
- 6) On 06-13-05, DDU deferred the case back to the Agency requesting additional medical information and test results/reports.
- 7) The Appellant was not informed DDU had requested additional medical evidence be provided. The Agency returned the case to DDU on 07-12-05 with no additional information.
- 8) DDU reviewed the case and found that although the case was deferred for additional medical information to be provided, none of the requested medical information was provided. The 4 alleged impairments: 1) neuropathy in both legs, 2) diabetes, 3) pigmentosa in both eyes, and 4) depression were denied at step 2 of the sequential evaluation process due to insufficient data after deferral.
- 9) On 11-08-05, the Agency sent a notice proposing to terminate the Appellant's DFA effective 11-30-05 because DDU determined he was no longer disabled. The Agency did not propose termination of the Appellant's Medicaid (MA-D) when DFA termination was proposed. The Appellant requested a hearing.
- 10) DDU was not aware the Appellant was receiving Medicaid and thought Medicaid was denied on 10-21-04. DDU considered the 05-12-05 referral a new application rather than "continuing disability review (CDR)".
- 11) On 02-06-06, a state hearing was held and the Appellant submitted additional medical information at the hearing. The State Hearing Decision (Appeal #1258505) sustained the Appellant's appeal and ordered the Agency to forward the new medical information to DDU to review and redetermine disability.

STATE HEARING DECISION CONTINUATION

- 12) On 05-22-06, the Agency forwarded the medical information obtained at the 02-16-06 hearing to DDU.
- 13) On 07-03-06, the Agency sent a notice proposing to terminate the Appellant's DFA and Medicaid (MA-D) effective 07-31-06. DDU determined the Appellant's physical and/or mental conditions were not severe enough to limit his ability to do basic work activities.
- 14) On 08-24-06, the Agency received and forwarded additional medical information to DDU for review, including various eye examinations. On the 08-24-06 eye exam, visual acuity is 20/60 in the right eye and 20/70 in the left eye, which does not meet the Social Security Administration's listing which requires remaining vision in the better eye after the best correction to be 20/200 or worse. DDU reviewed the additional medical information and found disability remains denied.
- 15) At the 10-30-06 hearing, the Appellant submitted additional medical information including information from Dr. N. Leonard, dated 09-28-06 and from Dr. S. Hashimi, dated 04-12-06. Dr. Leonard reported the Appellant's vision in the right eye was 20/200 and 20/60 in the left eye (See Exhibit #3). Dr. Hashimi reported the Appellant's current diagnoses of: 1) Major depressive disorder, recurrent, moderate; 2) Panic disorder with agoraphobia; 3) Psychotic disorder, not otherwise specified (See Exhibit #2).
- 16) DDU agreed to review this newly submitted medical information. The Appellant continues to receive Medicaid (MA-D) and \$115 monthly DFA.

CONCLUSIONS OF POLICY

Issues #1 and #2 (Appeal #1295479/DFA and #1295480/MA-D)

Policy and Analysis

The Appellant, now age 48, was previously determined to be disabled by DDU on 07-03-02 and was approved for Medicaid/MA-D and DFA benefits for the period 01-01-02 through 06-30-03. A continuing disability review (CDR) was required to determine the Appellant's continuing eligibility for these programs as DDU's disability determination was expiring. Medical documentation was gathered and referred to DDU for continuing disability determination.

On 10-21-04, DDU determined the Appellant was no longer disabled. The Agency issued a notice 10-25-04 proposing termination of the Appellant's MA-D and DFA. The Appellant requested a hearing 11-12-04. A rescheduled hearing was held 03-30-05. The Agency agreed to reinstate the Appellant's DFA and MA-D benefits, obtain additional medical information and resubmit his case to DDU to redetermine disability. Per this Agency agreement, the Appellant signed a State Hearing Withdrawal Request. The Agency reinstated the Appellant's MA-D and DFA effective 03-01-05. Medical documents were gathered and were forwarded to DDU, who received them on 05-12-05.

On 06-13-05, DDU deferred the case back to the Agency requesting additional medical information. The Appellant was not informed DDU had requested additional medical evidence be provided. The Agency returned the case to DDU on 07-12-05 with no additional information. DDU found that although the case was deferred for additional medical information to be provided, none of the requested medical information was provided. The 4 alleged impairments:

STATE HEARING DECISION CONTINUATION

1) neuropathy in both legs, 2) diabetes, 3) pigmentosa in both eyes, and 4) depression were denied at step 2 of the sequential evaluation process due to insufficient data after deferral.

On 11-08-05, the Agency sent a notice proposing to terminate the Appellant's DFA, but not his Medicaid benefits, effective 11-30-05, due to DDU's determination he was no longer disabled. DDU was not aware the Appellant was still receiving Medicaid and thought he had been "denied" Medicaid on 10-21-04. DDU considered the 05-12-05 referral a new application rather than "continuing disability review (CDR)".

On 02-06-06, a state hearing was held and the Appellant submitted additional medical information at the hearing. The State Hearing Decision (Appeal #1258505) sustained the Appellant's appeal and ordered the Agency to forward the new medical information to DDU to review and redetermine disability. On 05-22-06, the Agency forwarded the medical information obtained at the 02-16-06 hearing to DDU.

On 07-03-06, the Agency sent a notice proposing to terminate the Appellant's DFA and Medicaid (MA-D) effective 07-31-06, because DDU determined the Appellant's physical and/or mental conditions were not severe enough to limit his ability to do basic work activities. The Appellant's RSDI and SSI claims remain pending on appeal.

Ohio Administrative Code § 5101:1-39-03 (G) (4) states in part that when an individual's Social Security Administration (SSA) application is in an appeal at the time of the continuing disability review (CDR), the Agency shall continue Medicaid eligibility through the SSA appeals council review process, in accordance with paragraph (F) (6) of this rule (underline emphasis added). Per Cash Assistance Manual Transmittal Letter (CAMTL) No. 16, effective January 1, 2005, and Ohio Admin. Code § 5101:1-5-20, the process for obtaining a determination of disability from the ODJFS DDU Unit for Medicaid and DFA are the same. Per Ohio Admin. Code § 5101:1-5-20 (B) (o), all individuals who are in receipt of DFA who appear to meet the disabled criteria set forth in Ohio Admin. Code § 5101:1-3-03, must be referred to the SSI case management program.

During the 10-30-06 hearing, the Appellant submitted additional medical information. DDU agreed to review this newly submitted information.

Therefore, the Agency's 07-03-06 proposal to terminate the Appellant's Medicaid/MA-D and Disability Financial Assistance (DFA/GA-A) effective 07-31-06 are not correct and the appeals are SUSTAINED. The Agency shall forward the additional medical evidence received at the 10-30-06 state hearing to DDU. DDU shall review the case in its entirety based on the newly submitted medical information.

HEARING OFFICER'S RECOMMENDATIONS

Issue #1 (Appeal #1295479 – Disability Financial Assistance/DFA)

Issue #2 (Appeal #1295480 – Medicaid/MA-D)

Based on the record before me, I find the appeals should be SUSTAINED.

The Agency is directed to void the proposed 07-31-06 termination of the Appellant's Disability Financial Assistance (DFA), and continue both DFA and Medicaid (MA-D) benefits while the Agency resubmits the Appellant's case to DDU to determine disability.

STATE HEARING DECISION CONTINUATION

The Agency is directed to forward the additional medical evidence provided at the hearing to DDU. DDU agreed to review the Appellant's case in its entirety, including the newly submitted medical information. The Agency shall notify the Appellant, in writing, of the results of this re-review of disability, via the appropriate ODJFS notice(s) affording the Appellant full hearing rights if needed.

COMPLIANCE IS REQUIRED: Ohio Admin. Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date of this decision, but no later than ninety calendar days from the hearing request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, accompanied by supporting documentation. (2003)

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and the appeals are SUSTAINED.

Hearing Authority

January 2, 2007

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the TOLEDO District hearing section at 1-866-635-3748.

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, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request 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 may request a free copy of the tape recording of the hearing by contacting the district hearings section.

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

STATE HEARING DECISION CONTINUATION

15to. día recaee 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).

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

EXHIBITS

Agency

- A) The Disability Determination Unit's (DDU's) Appeal Summary and the Agency's JFS 04067 Appeal Summary (6 pages).
- B) The Agency's letter to DDU.
- C) ODJFS 3605 CDJFS Referral to CMS.
- D) The Agency's 05-22-06 letter to Dr. Unger and the attached Basic Medical form completed by Dr. Unger (4 pages).
- E) The 08-26-04 Eye Examination completed by Dr. Unger (2 pages).
- F) The 02-19-02 Eye Examination completed by Dr. Martin (2 pages).
- G) The 02-07-06 Eye Examination completed by Dr. Martin (2 pages).
- H) Objective medical documentation (10 pages).
- I) CRIS-E IQCH Cash Issuance History for GA-A (6 pages).
- J) CRIS-E IQEL Individual Eligibility History for Appellant (16 pages).
- K) CRIS-E IQCP Case Profile screens (3 pages).
- L) CRIS-E CLRC Running Record Comments from 01-17-02 to 10-19-06 (27 pages).
- M) CRIS-E CNHS Notice History and CNHD Notice History Detail for 07-03-06 MA-D termination notice (5 pages).
- N) CRIS-E AEICM County Medical Services Tracking System screen dated 08-24-06.
- O) DDU medical documentation originally numbered 1 through 35 with additional documentation (45 pages).

Appellant

- 1) The 07-03-06 CRIS-E Notice with Appellant's hearing request (2 pages).
- 2) The 04-12-06 letter from Dr. S. Hashimi (2 pages).
- 3) The 09-28-06 letter from Dr. Kessinger (2 pages).