

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County MONROE	District Hearings Section CANTON	Assistance Group Name		Assistance Group Number
Place of Hearing MONROE CDHS	Initial Hearing Date 12/07/1999	Rescheduled Postponed to 02/01/2000	Rescheduled Postponed to 02/01/2000	Rescheduled Postponed to 01/14/2000

Appellant/Representative	Appellant Representation
	Local Agency Representation Mr. Frank Stoops, CMS MHSS Mr. Dana Hoffhines, CMS MR Ms. Joy Harris, Assistant AG Ms. Fran Hogue

Date Notice Mailed 11/10/1999	Date Received by Local Agency	Date Received by ODHS 11/16/1999	Date Appeal Summary Received 12/10/1999	Date Scheduling Notice Mailed 01/21/2000
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Appeal Number(s)/Program(s) 9928314/DA, 9928315/MED

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 available for examination at the local agency during normal office hours.

If you believe the state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. The department will respond to your request quickly, so any information, arguments, or documents you want considered must be sent with your request. Your written request 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 15th 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.

ISSUE:

Whether the county department of human services (CDHS) acted in accordance with applicable regulations in denying appellant's 9/9/99 application for I(#9928314 DISABILITY ASSISTANCE (DA) cash and medical (MA-G) assistance and II(#9928315 MEDICAID FOR THE DISABLED (MA-D) effective 11/10/99 because county medical services (CMS) determined appellant does not meet the disability criteria.

WLW

Appeal(s) OVERRULED 9928314, OVERRULED 9928315	Date Issue 02/04/2000	Compliance 9928314
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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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FINDING OF FACT:

The record developed at hearing shows the appellant, age 43, made application for DA cash and MA-D on 9/9/99 alleging a disability of back pain with onset date of 1983. The CDHS gathered and submitted medical evidence to CMS on 10/12/99 via the ODHS 3605 CDHS Referral to CMS Request for Disability Determination. The medical evidence was reviewed by a CMS Medical Reviewer (MR) and the appellant's impairment was found to be severe but not meeting a listing. The case was referred for a medical vocational evaluation and appellant fell under Medical Vocational Rule 201.27, not disabled. CMS determined appellant's impairment does not prevent him from performing other work in the national economy and determined that he does not meet disability criteria and issued CMS disability determination on 11/4/99. The CDHS subsequently issued important notice denying DA/MA-G and MA-D on 11/10/99.

The CMS Medicaid Health Systems Specialist (MHSS) testified that appellant's allegation of back pain was denied as the result of Medical Vocational Rule 201.27. He testified that appellant has history of back injury in 1983 which did not require surgery. At that time appellant was found to have mild scoliosis and pelvic tilt and spondylolisthesis of L5 on S1. A thorough examination on 7/8/99 revealed normal gait and strength in lower extremities. "Questionable tenderness" over the spine and no muscle spasm. Reflexes were normal and there was no atrophy or wasting. Some limitation of straight leg raising and flexion of the lumbar spine was noted. With these findings appellant should be able to perform at least light work. The MHSS testified that considering appellant's age, 43, his 12th grade education and unskilled work history, appellant falls under Medical Vocational Rule 201.27; the decision is "not disabled".

The appellant testified that he was injured in 1983 and received a settlement from worker's compensation. He did not require surgery, but his back causes him constant pain. He testified that he applied for SSI; the application was denied and is under appeal. He testified that he has pain in his back which generates down into his legs. His legs have given out on him causing him to fall. He testified that exam of his

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back shows he has degenerating disc disease. He is in pain all the time; he has good and bad days. He testified that the back pain limits his ability to perform activities of daily living; he cannot stand nor sit for long periods of time and he can lift no more than five to ten pounds. He testified that the doctor says he is unemployable for 12 months or more. He testified that in addition to the back pain, he has high blood pressure and trouble with his sinus and allergies. He testified that he has no source of income and has no medical coverage.

Exhibit A includes the ODHS 7302 Basic Medical form completed by a family practitioner who indicates "First time seen" under date of last exam. This doctor indicates that appellant hurt his back in coal mine in 1983; that he was seen at Cleveland Clinic and told he had three bad vertebrae and could not go back to work; and that appellant has a three inch diameter cyst on left side of back that needs to be removed. He indicates appellant's health status as deteriorating. He indicates appellant may need repeat CAT scan of back and referral to an orthopedist and/or neurologist. The doctor indicates appellant's standing, walking, sitting and lifting are affected by his condition and he is extremely limited in pushing/pulling and bending; moderately limited in reaching, handling and repetitive foot movements and has no limitations in seeing, hearing and speaking. The doctor believes appellant is unemployable for 12 months or more.

The hearing case record was left open to afford appellant, with CDHS assistance, to obtain additional medical evidence to submit to CMS for review. The CDHS submitted additional medical evidence to CMS on 12/14/99 via the ODHS 3605. The medical evidence was reviewed by a CMS MR and CMS continued to deny disability. The state hearing was reconvened.

The CMS MHSS testified that allegation of dizziness with otitis and allegation of allergy were denied as being not severe; no evidence of current severe balance disturbance; hearing test was good and no evidence of a disabling allergy problem.

The CMS MR testified that although appellant's back pain is severe, there is no

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evidence of herniated disc, stenosis, narrowing of the canal where the spinal cord runs through; there is no MRI showing stenosis nor CAT scan showing herniated disc. There is no evidence of nerve entrapment, loss of reflexes in legs or muscle weakness nor pinched nerve.

Appellant testified that he feels like someone has a knife in his back. He has difficulty walking in the morning. He testified that he has an SSI hearing scheduled for 2/8/00.

The additional medical evidence submitted includes a medication dependency form dated 12/13/99 finding appellant is a medication dependent person.

EXHIBITS:

A. ODHS 7004 Social Summary Report for Disability Determination dated 9/24/99, ODHS 7302 Basic Medical Form; Report of Internal Medicine Examination

B. Objective Medical Evidence Including Specialist Report dated 5/19/86, Radiology Report dated 4/10/84, Radiology Report dated 4/24/84, Industrial Commission of Ohio Medical Report dated 4/26/84, Medical Report dated 5/30/84, Doctor's Report of Examination dated 9/14/84, Doctor's Report of Treatment for Recurrent L-S Sprain dated 9/24/84, Doctor's Report of Treatment dated 9/7/84, Cleveland Clinic Report of Examination dated 1/3/85, Doctor's Report of Re-Examination dated 1/23/86, Doctor's Letter to United Mine Workers of America Regarding Appellant's Condition dated 3/12/86, Cleveland Clinic Report of Examination dated 5/1/86

C. CMS MR Appeal Form, ODHS 3600 CMS Disability Determination dated 11/4/99, ODHS 3613 MTA Case Analysis Form dated 10/22/99 and ODHS 3605 CDHS Referral to CMS Request for Disability Determination dated 10/12/99

D. ODHS 3606 Medication Dependency Form dated 12/13/99

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- E. Objective Medical Evidence Including Doctor's Progress Notes dated 7/1/88 through 3/11/92, Audiological Evaluation, Allergy Chart, Copies of Prescriptions dated 12/13/99 and X-Ray Report dated 7/8/99
- F. CMS MR Appeal Form dated 12/20/99, ODHS 3605 CDHS Referral to CMS Request for Disability Determination dated 12/14/99, History Form dated 6/27/88

CONCLUSIONS OF POLICY:

Pursuant to Ohio Administrative Code (OAC) Rule 5101:1-5-01, eligibility for DA cash is limited to children under age 18; or individuals age 60 or over; or pregnant women; or certain individuals residing in a treatment center certified as an alcohol or drug addiction program by the Ohio Department of Alcohol and Drug Addiction Services; or individuals disabled as determined by CMS. Eligibility for MA-G is limited to individuals . . . determined to be medication dependent by a licensed physician.

OAC Rule 5101:1-5-20 states that disability for purposes of the DA program other than disability due to medication dependency is defined as the inability to do any substantial or gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for not less than nine months. The determination of disability by CMS is based on SSI disability criteria.

Pursuant to OAC Rule 5101:-1-39-03, limiting physical factor is a basic eligibility requirement in the MA-D program and must be met by age (65 years or older), blindness or disability. To be met by disability, an individual must be in receipt of SSI or RSDI based on his own disability; or be determined presumptively disabled by the CDHS; or have an SSI claim pending and be determined eligible by CMS. A person aged 18 or over is considered disabled if he has a physical or mental impairment which prevents him from doing any substantial gainful work. The

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impairment must have lasted or be expected to last for at least 12 months or must be expected to result in death.

CMS determined appellant had a severe impairment but that this impairment did not prevent appellant from performing other work in the national economy. CMS determined appellant fell under Medical Vocational Rule 201.27, which limits work capability to sedentary, and determined appellant not disabled. Medical evidence does not support a conclusion that appellant is disabled. This hearing officer concludes that the CDHS was correct in denying DA and MA-D because appellant did not meet disability criteria. However, considering the medication dependency form showing appellant to be medication dependent, this hearing officer concludes that the CDHS will need to determine if all other MA-G program eligibility criteria are met and if so, take appropriate action to institute appellant on the MA-G program.

HEARING OFFICER'S RECOMMENDATIONS:

I(#9928314 DA/MA-G) It is recommended the appeal relating to DA denial be overruled; however, based on medication dependency form dated 12/13/99, it is recommended the CDHS be directed to:

- . Determine if appellant meets all other MA-G program eligibility criteria and if so, institute the appellant on the MA-G program the first of the month following issuance of this decision; AND
- . Send appellant written notice of action taken as the result of this decision via the appropriate state form(s) and attach a copy of the form(s) to the ODHS 4068 State Hearing Compliance form.

The appellant retains the right to state hearing if he disagrees with any CDHS determination or action/lack of action taken in complying with this state hearing decision.

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II(#9928315 MA-D) It is recommended the appeal be overruled.

FINAL ADMINISTRATIVE DECISION AND ORDER:

I(#9928314 DA/MA-G) The Hearing Officer's recommendations are adopted. APPEAL OVERRULED. COMPLIANCE REQUIRED. (OAC Rule 5101:6-7-03 requires compliance with this decision within 15 calendar days from date of issuance, but in no event later than 90 calendar days from the date of hearing request.)

II(#9928315 MA-D) The Hearing Officer's recommendations are adopted. APPEAL OVERRULED.

Date Issued: 02/04/2000