

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>MORGAN</b>	District Hearings Section <b>CANTON</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>MORGAN CDHS</b>	Initial Hearing Date <b>01/02/2002</b>	Rescheduled Postponed to <b>02/19/2002</b>	Rescheduled Postponed to <b>01/22/2002</b>	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>William Hoffhines, CMS; Joan Bloomfield, Caseworker; Mary Woodward, SSI CM</b>

Date Notice Mailed <b>12/11/2001</b>	Date Received by Local Agency	Date Received by ODHS <b>12/14/2001</b>	Date Appeal Summary Received <b>01/16/2002</b>	Date Scheduling Notice Mailed <b>02/08/2002</b>
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Appeal Number(s)/Program(s) <b>1049032/MED</b>
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### 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 CANTON District hearing section at 1-800-686-1569.

**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) 752-8298.** 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 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 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 MED 1049032:**

On December 11, 2001 the Morgan County Department of Job and Family Services (Agency) notified the Appellant of County Medical Services (CMS) November 30, 2001 denial of the Appellant's application for disability dated April 26, 2001. The case was denied due to the Appellant not meeting the durational requirement of disabled for nine to 12 months or more. At issue in this appeal is whether CMS's denial was correct.

Based on an analysis of the facts and law as presented in the hearing, the Hearing Officer finds that CMS's denial is upheld. The Appellant required outpatient surgery for kidney stones in May 2001; he was unemployable for three months. The Appellant returned to his self employment in June 2001, thus the Appellant has not meet the durational requirement for MED of disabled for nine to 12 months or more. In addition there was no medical evidence provided which indicated that the Appellant's condition is severe and prevents him from performing basic work activities.

TDA

Appeal(s) <b>OVERRULED 1049032</b>	Date Issued <b>02/21/2002</b>	Compliance
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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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**PRELIMINARY MATTERS:**

The Appellant's request for a hearing is dated December 14, 2001. By letter dated December 21, 2001 the matter was set for an evidentiary hearing to begin on January 2, 2002. A request for reschedule was received and by letter dated January 11, 2002 the matter was rescheduled for January 22, 2002. An additional request for reschedule was received and by letter dated February 8, 2002 the matter was rescheduled and went forward on February 19, 2002. The Appellant was represented by his wife.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and the oral arguments presented and having examined the exhibits admitted into evidence, I make the following findings of fact:

1. The assistance group consists of the Appellant, age 51, and his wife, age 45. On April 26, 2001 the Appellant applied for medical coverage as the Appellant began having medical problems which resulted in outpatient surgery to dissolve kidney stones in May 2001. The Agency collected medical information and submitted the information to CMS for review. On June 21, 2001 CMS received the case which was reviewed by a medical reviewer and deferred for additional information on June 30, 2001. The case returned to CMS on October 29, 2001; it was reviewed in its entirety and was denied due to lack of duration on November 30, 2001. CMS determined that the Appellant's condition of Kidney Stones would not prevent him from performing basic work activities for nine months or longer for Disability Assistance (DA) or 12 months or longer for MED.
2. The Appellant who is self-employed has no medical insurance. He returned to work in June 2001. Since his outpatient surgery he has suffered from severe diarrhea. He cannot obtain medical insurance until this condition is resolved. His wife requested that medical assistance be approved to cover the cost of his medical bills until such time private insurance can be obtained.
3. Exhibit D, the basic medical completed by the Appellant's treating physician, indicates that the Appellant is employable. Exhibit E, the medication dependency form, shows that the Appellant is not medication dependent.

**CONCLUSION OF POLICY:**

Per Ohio Administrative Code (OAC) 5101:1-39-03, to be eligible for Medicaid (MED) an individual must be 65 years of age or older, blind or disabled. To be eligible on the basis of disability an individual must be in receipt of RSDI or SSI based on his/her own disability or determined to be disabled by CMS. Per OAC 5101:1-39-032, the determination of disability by CMS is based on the SSI requirements. Title 20 of the Code of Federal Regulations at sections 404.1520 et. al. further states how evaluations for SSI disability

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determinations are to be made. The determination under the SSR requires that there be a determination of whether an individual has a severe impairment or combinations of impairments that are substantiated by objective medical documentation which shows that the impairment will last at least 12 continuous months or result in death.

Per OAC 5101:1-5-17, eligibility for Disability Assistance (DA) cash benefits is limited to children under the age of 18, individuals age 60 or over, pregnant woman, individuals residing in an alcohol or drug program, certain refugees and legal immigrants and individuals determined to be disabled by CMS. Per OAC 5101:1-4-18 disability for purposes of the disability 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 last for not less than nine months. The CMS determination under SSR involves a multi-step sequential process; first, CMS must determine if the individual is employed. Current employment may or may not be considered in the disability determination process depending on the circumstances of the case. Second, CMS must determine if the individual has a severe impairment or a combination of impairments that significantly limits physical or mental ability to do basic work activities. Third, CMS must determine if the impairment or combination of impairments meets or equals any impairment criteria listed in the CMS regulations in Appendix I (i.e., specific parts of the body wherein the impairment must meet specific MED eligibility purposes). However, if the individual does not have an impairment must meet specific MED eligibility purposes). However, if the individual does not have an impairment or a combination of impairments that meets or equals the impairment criteria listed in the regulations, CMS must determine under the forth step in the evaluation process whether the individual can perform any past relevant work. If the individual is able to perform past relevant work, the case is moved to the fifth step for a determination of whether the individual can do any other work in the national economy.

**Analysis:**

In present case the Appellant is not 18 years of age or younger, 60 years of age or older, blind, pregnant, a resident of a treatment center, a legal immigrant, a refugee, medication dependent, in receipt of SSI or RSDI, therefore, the Appellant does not qualify for DA or MED based on that criteria. Therefore, the Appellant must be determined disabled through the CMS process.

Based on the medical evidence, the Appellant underwent outpatient surgery in May 2001 and returned to work in June 2001, thus the Appellant does not meet the durational requirement of disabled for nine to 12 months or more. In addition there was no medical evidence presented to show that the Appellant's condition is severe and that it prevents him from performing basic work activities. Should the Appellant's condition deteriorate, the Appellant may reapply.

**HEARING OFFICER'S RECOMMENDATION:**

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Based upon the record before me I find the appeal should be overruled. CMS's determination is upheld.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Finding the Hearing Officer's decision to be supported by the evidence, the above recommendation is adopted and the appeal is OVERRULED. No orders of compliance shall be issued against the Agency based on this appeal.

**Exhibits presented by CMS and entered into the record:**

- A. Appeal Summary
- B. CDJFS referral to CMS
- C. Social summary report
- D. Basic medical report
- E. Certification of medication dependency
- F. CMS disability determination
- G. Physician case referral form
- H. Objective medical documentation
- I. Miscellaneous documents
- J. Five step sequential evaluation

Date Issued: 02/21/2002