

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

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1266197	OWF	SUSTAINED
Compliance Required		
Decision Date:	03/24/2006	
Request Date:	01/06/2006	
Hearing Officer:	MARGO WALKER	

State Hearing Decision

ISSUE SECTION

The Athens Department of Job and Family Services (agency denied appellant's 12-05 application for an extension of the Ohio Works First (OWF) time limit hardship exemption under the agency's Hardship Exemption Plan effective 8-20-02 because the appellant has already received sixty months of OWF as of 12-05. The appellant was County Medical Services (CMS) approved through 1-13-06. The issue on appeal is whether the agency acted in accordance with applicable policy in denying appellant's request for extension of the OWF time limit hardship exemption because the Assistance Group has received the maximum sixty months. The appellant has received the maximum of sixty months OWF benefits under the OWF time limit hardship exemption plan ,however I find that the pending CMS determination negates the agency's denial as all aspects of the assistance group's circumstances cannot be evaluated by the agency. Thus, I recommend the appeal be sustained. (1266197)

PROCEDURAL MATTERS

1. The hearing request was received by the Bureau of State Hearings on 1-6-06. The hearing was scheduled to be heard on 1-26-06. The hearing was rescheduled and heard on 2-8-06.
2. Participating in the hearing was the appellant's representative from Southeastern Ohio Legal Services, Sharon Herring and Lisa Mellott with the Athens County Department of Job and Family Services.
3. An appeal summary and relevant documentation were provided for the hearing.

FINDINGS OF FACT

1. The household size of six consists of the appellant, her husband and four dependent children ages 11, 8, 7 and 4. One parent (father) is in receipt of Supplemental Security Income (SSI).
2. The household has received sixty months of Ohio Works First (OWF). The appellant has alleged a disability, has applied for SSI several times and has been denied SSI each time she has applied. The last date of application for SSI was 8-4-05, with a denial due to "non severity". The appellant's appeal of the denial was untimely.

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3. The appellant has been approved CMS through 1-13-06. The appellant is required to complete a new CMS review per the CMS disability determination dated 1-05. The appellant completed an assessment for continued hardship extension on 12-14-05 which then went to a four person team review committee for a determination to be made.
4. The review team denied the hardship extension as they determined that the assistance group does not meet criteria for “disability” in order to be considered for a federal hardship and to continue OWF benefits for 1-06.
5. The appellant has difficulty completing required tasks and meeting the requirements to show for all scheduled appointments. There is evidence of mental health issues. The mental function assessment dated 9-05 indicates that the appellant is unemployable.
6. Notice of the denial was mailed to the household on 12-13-05. The hearing request was not received timely, and the benefits have terminated.

CONCLUSIONS OF POLICY:

Policy:

Ohio Administrative Code (OAC) Rule 5101:1-5-01 (D) (1) states that DA cash assistance is limited to the following individuals: children under 18; individuals over age 60; pregnant women; residents of a residential treatment center certified by the Ohio Department of Alcohol and Drug Addiction Services; or individuals who are disabled as determined by the County Medical Services Section (CMS). OAC Rule 5101:1-2-10 (C)(3) explains a DA application awaiting a disability determination, may pend up to ninety days before the appropriate notice is mailed. Furthermore, the ninety-day limit may be exceeded in situations where completion of the determination of eligibility is delayed because of the following circumstances, which are considered beyond the control of the Agency or Assistance Group:

- (a) failure, with good cause, to secure necessary verifications;
- (b) failure or delay on the part of an examining physician to provide all needed information.

Ohio Administrative Code (OAC) Rule 5101:1-38-01 requires Medicaid eligibility be determined on an individual basis for those individuals who are aged, blind, or alleging a disability. Section (F)(2) requires that Medicaid eligibility be determined as soon as possible within thirty days of the application date. The only exception noted is when the Medicaid application is pending a disability determination. In those cases, the application may pend up to ninety days before a determination is made. Under no circumstances however, shall the time limitations be the basis for denial.

Analysis

In accordance with the above-cited policy regarding DA cash assistance, and based on the testimony presented at the hearing, the appellant is still pending a disability determination through the County Medical Services section. Therefore, the Agency's denial of hardship assistance is premature at this time and cannot be affirmed. The agency's determination that the appellant does not meet the disability criteria is not well taken, as CMS has yet to make a new determination. The appellant had previously been found disabled with a review date of 1-13-06. A Mental Functional Capacity Assessment was done 9-29-05. The appellant's onset of disability

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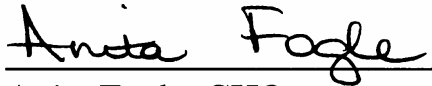
is 5-1-04. The appellant received a hardship extension/just cause extension due to a disability based on mental and physical impairments. CMS makes the determination of disability. In this case, a current review is pending and CMS has not yet made the determination. It is not appropriate to deny the just cause extension while CMS review is pending.

HEARING OFFICER'S RECOMMENDATION

Based on the record before me, I find that the appeal 1266197 should be Sustained. In compliance, the agency is instructed to reopen the 12-05 application and continue benefits pending the determination by CMS. Once the determination is made by CMS, the agency shall notify the appellant via the proper procedures with appeal rights retained.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the Hearing Officer's recommendation to be supported by the evidence and facts, the recommendation is adopted and the appeal is sustained with compliance 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

March 24, 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.

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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).

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

Ohio Administrative Code 5101:1-23-01 Ohio works first (OWF): time-limited receipt of assistance.

EFFECTIVE DATE: October 12, 2002.

Most current prior effective date: July 1 2002.

(A) Federal time limit

No state may use any of its federal temporary assistance for needy families (TANF) funds (including commingled funds as defined in paragraph (B) of rule 5101:1-1-01 (B) of the Administrative Code) to provide assistance (as defined in paragraphs (E)(1) to (E)(4) of this rule and paragraph (B) of rule 5101:1-1-01 (B) of the Administrative Code) to a family that includes an individual who meets one of the conditions set forth in paragraphs (C)(1) to (C)(5) of this rule, who has received assistance for a total of sixty cumulative months. The sixty months do not have to be consecutive months.

(B) State time limit

In Ohio, an assistance group is ineligible to participate in OWF if the assistance group includes an individual who meets one of the conditions set forth in paragraphs (C)(1) to (C)(5) of this rule, who has received OWF assistance for thirty-six months. This time limit applies regardless of whether the thirty-six months are consecutive. Ohio law provides for extensions of OWF beyond the thirty-six month limit, with the provision that no assistance group shall receive assistance under the OWF program in violation of the federal sixty-month time limit for receipt of TANF assistance. When an assistance group is receiving OWF cash assistance benefits on the basis of state hardship or good cause, as set forth in paragraphs (B)(1) and (B)(2) of this rule, such benefits continue to count toward the federal sixty-month time limit provided in paragraph (A) of this rule. The CDJFS should examine the assistance group's unique special circumstances that caused the need for an extension, and should address these special needs, barriers and conditions in the self-sufficiency contract. When an assistance group is receiving OWF cash assistance due to either a state hardship or good cause extension (as provided in paragraphs (B)(1) to (B)(2) of this rule), the assistance group is in receipt of OWF and as such is subject to all OWF eligibility requirements. The two types of extensions beyond the thirty-six month time limit that count toward the federal sixty-month limit are:

EXHIBITS

Agency

- A Mental Functional Capacity Assessment (4 pages) dated 9-05
- B letter to and from Tri County Mental Health Counseling (2 pages)
- C Hardship review (1 page)
- D good cause policies (1 page)
- E running record comments CRISE system (2 pages)
- F Basic Medical (2 pages)
- G County Conference
- H OWF time limit benefits

STATE HEARING DECISION CONTINUATION

I hardship exemption time limit assessment form (4 pages)

Appellant

- 1 hearing request
- 2 representative authorization
- 3 reschedule request
- 4 County Medical Services Disability Determination dated 1-12-05