

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County ATHENS	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing ATHENS CDHS	Initial Hearing Date 03/07/2005	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation J. Skatula, Caseworker; L. Gribble, CMS Case Manager

Date Notice Mailed 02/01/2005	Date Received by Local Agency	Date Received by ODHS 01/31/2005	Date Appeal Summary Received 03/07/2005	Date Scheduling Notice Mailed 02/25/2005
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Appeal Number(s)/Program(s) 1213078/FS, 1213079/DFA, 1213080/MED
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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.

ISSUE SECTION:

1. By notice mailed on 1-7-05, the Athens County Department of Job and Family Services (Agency) proposed to terminate the Appellant's Disability Financial Assistance (DFA) effective 1-31-05, because County Medical Services (CMS) found that the Appellant provided "insufficient data after deferral" to show that Appellant was still a disabled person through the Continuing Disability Review (CDR) process for a previous allegation of disability and for one new allegation of disability. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, the Hearing Officer found that the Agency's action was correct and in accordance with the regulations cited. Thus, the Hearing Officer recommends that Appeal Number 1213079 (DFA) be overruled.

2. By notice mailed on 1-7-05, the Agency proposed to terminate the Appellant's Medicaid for the Disabled effective 1-31-05, because County Medical Services (CMS) found that the

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Appeal(s) OVERRULED 1213078, 1213079, 1213080	Date Issued 04/01/2005	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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Appellant provided "insufficient data after deferral" to show that Appellant was still a disabled person through the Continuing Disability Review (CDR) process for a previous allegation of disability and for one new allegation of disability. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, the Hearing Officer found that the Agency's action was correct and in accordance with the regulations cited. Thus, the Hearing Officer recommends that Appeal Number 1213080 (MED) be overruled.

3. By notice mailed on 2-1-05, the Agency proposed to terminate the Appellant's Food Stamps (FS) benefits effective 2-28-05, due to failure to register for work or complete a work appraisal. After consideration of the testimony and evidence provided at the state hearing in conjunction with the applicable policy, the Hearing Officer found that the Agency's action was correct and in accordance with the regulations cited. Thus, the Hearing Officer recommends that Appeal Number 1213078 (FS) be overruled.

PROCEDURAL MATTERS:

1. The Appellant's written request for state hearing was received by the Ohio Department of Job and Family Services (ODJFS), Bureau of State Hearings on 1-31-05.
2. The state hearing was scheduled and heard on 3-7-05.
3. All witnesses were sworn in by the Hearing Officer.
4. CMS prepared and presented an appeal summary which was received by the Hearing Officer. The Appellant presented no documentation to the Hearing Officer either prior to or at the time of the state hearing. All documentation received by the Hearing Officer was reviewed and entered into the hearing record in its entirety.

FINDINGS OF FACT:

1. The Appellant is a 27-year old single adult man. The Appellant received Medicaid for the Disabled and DFA benefits through the Agency based on a CMS determination that the Appellant was a disabled individual for the period of 8-1-02 through 11-30-03.
2. On 2-18-04, CMS received the Appellant's medical records from the Agency for a continuing disability review (CDR). On 4-7-04, CMS deferred this case for additional medical records.
3. On 6-1-04, CMS received the Appellant's case again from the Agency. On 6-7-04, CMS denied a disability determination for this case following the CDR process. CMS found that the Appellant provided "insufficient data after deferral" to show that Appellant was still a disabled person through the Continuing Disability Review (CDR) process for a previous allegation of disability and for one new allegation of disability.
4. On 1-6-05, the Agency proposed to terminate the Appellant's Medicaid for the Disabled and

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DFA benefits effective 1-31-05, due to the CMS denial of disability. The notice of adverse action was mailed to the Appellant on 1-7-05.

5. The Agency proposed the same action on three prior occasions and three prior state hearings were scheduled (9-28-04, 11-1-04, and 12-22-04), all of which were abandoned by the Appellant. Appellant's benefits continued as fair hearing benefits during the pendency of these state hearing and, each time, the Agency re-proposed the adverse actions, rather than terminating the benefits after all appeal rights had been exhausted.

6. The Agency did perform a pre-termination review for Medicaid coverage for this Appellant.

7. The Appellant has one allegation of disability for the CDR: anxiety disorder. The Appellant had one new allegation of disability: depression.

8. The Appellant does not have an authorized representative.

9. The Appellant last worked sometime in 2001 as a fast food worker.

10. The Appellant does not have an SSI appeal pending. The Appellant was denied and did not appeal the denial. Appellant's appeal rights have expired.

11. The Appellant takes no prescription medications. The Appellant does not see any medical providers and does not take any type of medical treatment.

12. The Appellant has not responded to repeated requests for additional medical documentation to determine medical improvement. The Appellant does not appear for medical appointments arranged by the Agency.

13. On 1-6-05, the Agency mailed a letter to the Appellant to register for work or come to the Agency for a work appraisal.

14. As of the date of the state hearing, the Appellant has not responded to the Agency's request to appear for a work appraisal for FS or to register for work.

15. By notice mailed on 2-1-05, the Agency proposed to terminate the Appellant's FS benefits effective 2-28-05. The Appellant's FS benefits were terminated effective 2-28-05.

CONCLUSIONS OF POLICY:

Policy

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1. Ohio Admin. Code § 5101:6-7-01(C)(1) (2003) provides that the Hearing Officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. "It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules."

2. Ohio Admin. Code § 5101:1-39-03 (2005) outlines the limiting physical factor requirement in the Medicaid program. The limiting physical factor requirement may be met by either age (age 65 or older), blindness, or disability. Subsection (A)(10)(c)(I) provides that "disability" is defined, for persons over 18, as the inability to "engage in any substantial 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 a continuous period of not less than twelve months." In addition to this determination, the individual must have a pending social security disability claim.

Subsection (B)(3) defines "Continuing disability review" as "the process by which the CMS unit determines whether an individual continues to meet the disability criteria for medicaid eligibility. The CMS unit will conduct a continuing disability review for individuals who are approved for disability or blindness by the CMS unit but who are not yet approved for SSA disability benefits through the social security administration (SSA)."

3. In the Code of Federal Regulations (CFR), 20 CFR 416.994(b) (2004) directs that the continuing disability review is predicated on a finding of whether an individual has "any medical improvement in [his] impairment(s) and, if so, whether this medical improvement is related to [his] ability to work." "Medical improvement" is defined as "any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see Sec. 416.928)." There must also be a showing that the individual is "currently able to engage in substantial gainful activity before . . . [he is] no longer disabled."

4. In the DFA program, Ohio Admin. Code § 5101:1-5-01(D)(1) (2003) explains that eligibility for DFA is limited to the following individuals:

- (a) "An individual who is unable to do any substantial or gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for not less than nine months, as determined by the county medical services section (CMS)."
- (b) certain residents of alcohol or drug-treatment centers.
- (c) certain individuals age 60 or older.

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5. In the FS program, Ohio Admin. Code § 5101:4-3-29 (2003) requires that each participant in the FS program who is not "exempt pursuant to paragraph (B) of rule 5101:4-3-11 of the Administrative Code" is a required participant in the food stamp employment and training (FSET) program. The Agency shall schedule a work appraisal for each of these individuals. Subsection (D)(5) states that, "Failure without good cause to attend an appraisal interview or to complete an appraisal by any FSET required individual shall result in ineligibility for that individual."

Analysis

This case was correctly evaluated using the continuing disability review process as the Appellant was previously found to be a disabled person by CMS. It was not disputed that the Appellant has been completely non-cooperative with respect to attending medical appointments scheduled by the Agency and gathering the medical records needed by CMS to make the CDR determination and to evaluate the Appellant's allegation of depression. Additionally, the Appellant does not meet the criteria to be found disabled as he does not have a pending social security disability or SSI disability determination with the Social Security Administration (SSA). By his own testimony, the Appellant has let the time pass to appeal the SSA denial and has not re-applied for SSI. I also noted that the Appellant takes no medications or medical treatment by his own choice. The proposed termination of Medicaid for the Disabled and DFA has been through the state hearings process on three previous occasions, all of which have been abandoned. I found that the Agency's action to terminate Medicaid for the Disabled and DFA for this case was correct and in accordance with the regulations cited. The Appellant was reminded at the state hearing of his right to re-apply for these programs, and the need to reapply for SSI and appear for all medical evaluations scheduled by the Agency.

For the FS appeal, I also found that the termination of FS for the Appellant effective 2-28-05, was correct. It was not disputed that the Appellant failed to appear for a FS work evaluation and failed to register for work. The Appellant was also reminded at the state hearing of his right to re-apply for FS at any time.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the record before me, I find that Appeal Numbers 1213080 (MED), 1213079 (DFA) and 1213078 (FS) should be overruled.

FINAL ADMINISTRATIVE DECISION AND ORDER:

I find that the Hearing Officer's recommendations are supported by policy and the evidence and I adopt the recommendations.

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The Medicaid, Disability Financial Assistance and food stamp appeals are overruled.

APPENDIX:

Agency Exhibits:

- A. CMS Appeal Summary (3 pages inclusive)
- B. CDR explanation (1 page inclusive)
- C. CDJFS Referral to CMS dated 12-5-01 (1 page inclusive)
- D. CDJFS Referral to CMS dated 5-28-04 (1 page inclusive)
- E. CDJFS Referral to CMS dated 12-20-02 (1 page inclusive)
- F. CDJFS Referral to CMS dated 12-10-02 (1 page inclusive)
- G. CDJFS Referral to CMS dated 3-28-02 (1 page inclusive)
- H. CDJFS Referral to CMS dated 2-13-04 (1 page inclusive)
- I. "Social Summary Report for Disability Determination" dated 11-20-01 (2 pages inclusive)
- J. "Social Summary Report for Disability Determination" dated 11-20-02 (2 pages inclusive)
- K. "Social Summary Report for Disability Determination" dated 11-14-03 (2 pages inclusive)
- L. "Basic Medical" employability "unclear" (2 pages inclusive)
- M. "Mental Functional Capacity Assessment" dated 11-20-02 (2 pages inclusive)
- N. "Mental Functional Capacity Assessment" dated 1-17-02 (2 pages inclusive)
- O. Medication Dependency Form dated 11-27-01 (1 page inclusive)
- P. "County Medical Services Disability Determination" dated 4-7-04 (1 page inclusive)
- Q. "County Medical Services Disability Determination" dated 6-7-04 (1 page inclusive)
- R. "County Medical Services Disability Determination" dated 1-23-02 (1 page inclusive)
- S. "County Medical Services Disability Determination" dated 1-2-03 (1 page inclusive)
- T. Medical evidence (23 pages inclusive)
- U. SSI letter dated 11-27-03 (1 page inclusive)
- V. Agency letter dated 1-31-02 (1 page inclusive)
- W. ODJFS letter to Agency dated "November 2002" (1 page inclusive)
- X. Medical information release forms (2 pages inclusive)
- Y. "Authorization for Reimbursement of Interim Assistance Initial Payment" (1 page inclusive)
- Z. "Authorization for the Release of Use of Protected Health Information" forms (6 pages inclusive)
- AA. Agency Letter to Appellant (1 page inclusive)
- BB. Agency medical appointment letter to Appellant dated 10-29-03 (1 page inclusive)
- CC. Agency medical appointment letter to Appellant dated 11-5-03 (1 page inclusive)

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Appellant Exhibits:
[None]

Date Issued: 04/01/2005