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In the Matter of

S.M.

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**FINAL DECISION**

The Division of Developmental Disabilities ("Division" or "DDD") has determined that S.M. ("petitioner") is not eligible to receive Division-funded services, as he is not eligible for Medicaid. Petitioner does not appeal this determination. Rather, he appeals from the Division's determination that should he become eligible for Medicaid in the future and wish to receive Division-funded services at that time, he must apply through the Division's intake process.

On December 29, 2014, an administrative review officer issued a Recommended Decision in this matter, finding that the Division's actions were proper. Pursuant to N.J.A.C. 10:48, the parties were given the opportunity to file exceptions to the Recommended Decision; petitioner did so on January 30, 2015. I now issue the Final Decision.

The following items were reviewed in preparing this Final Decision: petitioner's submissions provided by his counsel dated May 13, 2014, August 28, 2014, November 10, 2014 and January 30, 2015; the Informal Conference Report dated August 15, 2014; a memorandum from the Director of the Medicaid Eligibility Project dated November 14, 2014; the Recommended Decision; the Division's file on S.M.; and applicable statutes and regulations referenced in petitioner's submissions and this Final Decision.

**BACKGROUND**

S.M. was born on June 29, 1983. He was found eligible to receive Division services on May 1, 2001. S.M. is diagnosed with neurological impairment and diabetes, as well as other related medical conditions. In February 2014, a Division psychologist reviewed S.M.'s records and certified that he has a mild intellectual disability.

S.M. resides with his father. He self-administers his medications and works competitively at a grocery store. When he was eligible for Division-funded services, the Division provided S.M. with a job coach. S.M.'s records indicate that he does not have a court-appointed legal guardian.

In April 2014, the Division received notice that S.M. had been denied Medicaid eligibility due to income and assets above the applicable Medicaid limit. His assets included bank accounts of \$25,000 and \$14,000, a savings account in the amount of \$8,000, and a checking account containing \$2,000. Effective January 22, 2013, individuals wishing to receive or continue to receive Division services were required to be eligible for Medicaid. See N.J.S.A. 30:4-25.9 and N.J.A.C. 10:46-1.1(b). Therefore, based upon S.M.'s lack of Medicaid eligibility, the Division notified him by letter dated April 16, 2014 that he was not eligible to receive Division-funded services. The letter advised S.M. that he could seek an administrative appeal.

S.M. appealed by letter dated May 13, 2014. His letter states in part: "This appeal is being filed to contest DDD's decision to close [S.M.'s] DDD case file." An informal conference was held on July 22, 2014 in an effort to resolve the matter. The matter was not resolved; in a report dated August 15, 2014 the regional administrative practice officer who chaired the conference concluded that the Division correctly determined that S.M. was not eligible to receive Division-funded services. The report advised that should he become eligible for Medicaid in the future and wish to receive services, he should contact the Division to seek an eligibility redetermination. The report also recommended that S.M. contact the Division of Vocational Rehabilitation Services regarding job coaching services.

By letter dated November 10, 2014, S.M. requested to continue his appeal through administrative review. The letter did not dispute that S.M. is ineligible for Division services due to his Medicaid ineligibility. Rather, S.M. continued to "contest DDD's decision to close [S.M.'s] DDD case file." Similarly, his exceptions to the Recommended Decision state in part: "... the main issue in this case is not whether [S.M.] should be receiving DDD services paid for by

Medicaid... Rather, it is whether or not it is proper ...for the DDD to strike [S.M.] from the list of those determined to be developmentally disabled by the DDD, and to close his case file.”

## DISCUSSION

As petitioner acknowledges, individuals wishing to receive services funded by the Division must meet both the functional eligibility criteria and be eligible for Medicaid. The Division’s Eligibility regulation provides:

The provisions of this chapter shall apply to all individuals applying to the Division for eligibility under N.J.S.A. 30:4-25.1 et seq. and 30:4-165.1 et seq. Individuals under the age of 21, individuals who do not meet functional eligibility criteria, and individuals who are not Medicaid eligible, are not eligible to receive Division services, except for transitional planning as provided for in N.J.A.C. 10:46-2.1(f). See N.J.A.C. 10:46-1.2

Therefore, as S.M. is not Medicaid eligible, he is not eligible to receive Division services.

S.M. argues that if he becomes Medicaid eligible in the future, that eligibility should “trigger DDD services” without the need to reapply. This argument reflects a misunderstanding of the manner in which the Division assesses and serves individuals with developmental disabilities. S.M. is not currently a Division client, due to his Medicaid ineligibility. If at some point in the future he becomes Medicaid eligible, he must, like all individuals desiring to receive services from the Division, contact the intake unit of the Division’s Community Services Office that serves the county in which he lives. This is the only manner in which he may receive services. Should S.M. obtain Medicaid, this may occur in a month, a year, or ten years. His functional limitations at that time would need to be assessed to determine whether he was eligible for services, and, if he were eligible, to assess his particular need for supports and services relating to his developmental disability. Certainly, in this case, the Division has records relating to S.M. that the Community Services Office would be able to review in determining eligibility. Depending upon the passage of time, these records could have varying relevance.

Petitioner argues that the effect of the Division's requirement that he apply for services if he obtains Medicaid in the future "will likely be to severely damage [S.M.] if and when he will require DDD services." No justification is offered for this assertion. S.M.'s record reflects that he is independent in many ways. He is his own guardian. He is able to self-administer his medications. He regularly attends the religious services of his choice. He drives. He has aunts, uncles, cousins and family friends that he considers important to his life. He can be left alone overnight in his home and will spend up to eight hours by himself in the community. S.M. uses the telephone and the computer. At the time of his last service plan meeting with the Division in August 2013, he was working sixteen hours per week as a store clerk at a supermarket, with the support of a job coach. These facts do not support that S.M. will be "severely damaged" should he obtain Medicaid and require Division services in the future. Rather, they indicate that he would have the ability to apply for those services and obtain whatever assistance he may require from family, friends or others.

Petitioner also states that "persons like [S.M.] are most likely to become Medicaid eligible only after the passing of their parents, guardians, and advocates, making it unlikely that they can jump through the myriad hoops necessary to reestablish classification as developmentally disabled without their support system in place." Petitioner offers no support for this claim, and it is not clear how S.M.'s income and asset levels would be reduced so that he would be eligible for Medicaid upon the passing of his father. Additionally, petitioner references "myriad hoops" necessary to apply for Division services without any support for this claim, other than asserting that it took S.M. "more than two years to obtain his status (as a Division eligible individual) and that was with the help of his school."

However, a review of S.M.'s records indicates that the timeframe for the Division's determination that S.M. met the functional eligibility criteria was significantly less than two years. By letter dated November 29, 2000, S.M.'s father wrote to his Division Community Services Office to obtain functional eligibility for S.M., in advance of his eighteenth birthday in June 2001.

Enclosed with that letter was S.M.'s latest Individualized Education Plan, along with other documents. On December 11, 2000, S.M.'s father submitted additional documents at the request of the Division. With a cover memorandum dated February 1, 2001, S.M.'s school provided the Division with the most recent reports that it had for S.M. On May 1, 2001, the Division determined that S.M. was eligible for Division services, approximately five months after petitioner's father first submitted documentation and three months after S.M.'s school provided its information to the Division. Thus, the eligibility process did not require two years to complete. Petitioner's assertion that S.M. would be "severely damaged" and without needed services for a long period of time should he obtain Medicaid in the future and seek to apply for Division services is therefore without support. There is no indication that he would, in fact, be "severely damaged," and no indication that the process takes "many years to complete," as petitioner asserts. Last, to the extent that petitioner argues that S.M. would require assistance to apply for Division services should his father pass away, his record reflects a support system including extended family members or members of his faith community, among others, who would be available to assist him. In addition, Division staff routinely provide assistance with the application process to individuals who do not have active family members or other advocates.

Petitioner also asserts that the purpose of requiring individuals such as S.M. to apply for services should they become Medicaid eligible in the future is to save money, as individuals will be without services pending the completion of the application process. This is a bald assertion with no support offered. The application process is necessary to ensure that the Division provides appropriate services to meet the needs of the citizens of New Jersey who are eligible for those services.

While petitioner has framed his appeal as contesting the Division's decision to "close his file," what petitioner is arguing for is the ability to receive services at some unknown date in the future when he may obtain Medicaid without providing the Division the opportunity to determine whether he meets the statutory and regulatory functional eligibility criteria. As indicated in the

Recommended Decision, the Division may reassess an individual's functional criteria at any time. See N.J.A.C. 10:46-2.1(j). This provision allows the Division to ensure that it is providing services to individuals who meet the statutory and regulatory definition for persons with developmental disabilities. As the Division may reassess an individual's functional eligibility at any time, S.M.'s argument that the Division should not assess his functional eligibility should he obtain Medicaid is unpersuasive. Simply put, S.M. may not receive Division-funded services unless he is functionally eligible.

### CONCLUSION

For the foregoing reasons, I find that the Division's determination that S.M. is not eligible for DDD services was proper. Should S.M. obtain Medicaid in the future and seek to obtain Division services at that time, he must apply pursuant to N.J.A.C. 10:46.

This is my Final Decision.

Dated: 4/6/15

  
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Elizabeth M. Shea  
Assistant Commissioner  
Division of Developmental Disabilities