APPENDIX A

King v. Ohio Dept. of Job @ Fam. Servcs., 9th Dist. Summit No. 29198, 2019-Ohio-2989, 2019 WL 330997, 2019 Ohio App. LEXIS 3072 (July 22, 2019)

Order Affirming Trial Court Decision

CARR, Judge.

{¶1} Appellant Derrick Martin King appeals from the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In early July 2017, Mr. King received notice from Summit County Department of Job and Family Services that his Disability Financial Assistance Program ("DFA") benefits were being terminated pursuant to the enactment of Am.Sub.H.B. No. 49, which repealed portions of the Ohio Revised Code that authorized the benefits. Specifically, section 812.40 of Am.Sub.H.B. No. 49 provides:

(A) The repeal of sections 5115.01, 5115.02, 5115.03, 5115.04, 5115.05, 5115.06, 5115.07, 5115.20, 5115.22, and 5115.23 and the amendment of sections 126.35, 131.23, 323.01, 323.32, 329.03, 329.051, 2151.43, 2151.49, 3111.04, 3113.06, 3113.07, 3119.05, 5101.16, 5101.17, 5101.18, 5101.181, 5101.184, 5101.26, 5101.27, 5101.28, 5101.33, 5101.35, 5101.36, 5117.10, 5123.01, 5168.02, 5168.09, 5168.14, 5168.26, 5502.13, 5709.64, and 5747.122 of the Revised Code take effect on December 31, 2017.

(B) Notwithstanding the provisions of Chapter 5115. of the Revised Code, on and after the effective date of this section and until December 31, 2017, all of the following apply to the Disability Financial Assistance Program:

(1) Beginning July 1, 2017, the Department of Job and Family Services shall not accept any new application for disability financial assistance.

(2) Before July 31, 2017, the Department shall notify the following individuals that benefits shall terminate on July 31, 2017:

(a) Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the federal Social Security Administration and who have received a denial of reconsideration from the Administration on or before July 1, 2017;

(b) Recipients who do not have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security

Administration and who have received from the Administration on or before July 1, 2017, an initial denial of benefits or denial of reconsideration.

(3) Beginning on July 1, 2017, and ending on October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have not received a denial of reconsideration from the Social Security Administration.

(4) After October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and have not received a denial of reconsideration from the Administration.

(C) Until July 1, 2019, the Department, or the county department of job and family services at the request of the Department, may take any action described in former section 5115.23 of the Revised Code to recover erroneous payments, including instituting a civil action.

(D) Beginning December 31, 2017, the Executive Director of the Governor's Office of Health Transformation, in cooperation with the Directors of the Departments of Job and Family Services and Mental Health and Addiction Services, the Medicaid Director, and the Executive Director of the Opportunities for Ohioans with Disabilities Agency, shall ensure the establishment of a program to do both of the following:

(1) Refer adult Medicaid recipients who have been assessed to have health conditions to employment readiness or vocational rehabilitation services;

(2) Assist adult Medicaid recipients who have been assessed to have disabling health conditions to expedite applications for Supplemental Security Income or Social Security Disability Insurance benefits.

{¶3} Mr. King filed a request for a state hearing to appeal the determination. Mr. King submitted a written argument arguing that the repeal of Chapter 5115 of the Ohio Revised Code violated his constitutional rights to safety, due process, and equal protection under the law. The state hearing decision stated that, "[b]ased upon the testimony provided, the Appellant falls within the category of any DFA recipient who has a pending application for SSI or SSDI with the Social Security Administration, and who has ever received a denial of SSI or SSDI at the reconsideration appeal level on or before July 1, 2017. Therefore * * * termination of DFA eligibility for the Appellant is supported." Mr. King appealed that decision. The administrative appeal decision affirmed the decision of the state hearing decision. That decision was the final decision of Appellee Ohio Department of Job and Family Services ("ODJFS").

{¶4} Mr. King appealed the decision to the Summit County Court of Common Pleas. At the time of that appeal, Mr. King had a related action for declaratory judgment pending in another case. Mr. King filed a motion in the administrative appeal for the production of a transcript of the state hearing pursuant to R.C. 5101.35(E)(4), which ODJFS opposed because it alleged Mr. King did not meet the requirements set forth in the statute. Mr. King additionally filed a motion to supplement the record of the administrative appeal under Loc.R. 19.04 of the Court of Common Pleas of Summit County, General Division ("Summit Cty. Loc.R. 19.04"), which ODJFS opposed because ODJFS alleged the evidence failed to qualify as newly discovered evidence under R.C. 119.12(K). The lower court denied both motions.

{¶5} While his administrative appeal was pending, Mr. King filed an action in prohibition with the Supreme Court seeking to prevent the lower court from conducting further proceedings while Mr. King's action for declaratory judgment was pending in another case.

{¶6} In Mr. King's merit brief in the administrative appeal in the lower court, he argued that R.C. 119.12(K) and 5101.35(E)(4) and Summit Cty. Loc.R. 19.04 were unconstitutional as applied because they denied him meaningful access to the courts. Additionally, he raised several facial challenges to Am.Sub.H.B. No. 49, arguing that it violated his rights to safety, due process, and equal protection. Mr. King attached numerous documents to his brief which were referenced in his brief. ODJFS moved to strike the attachments and related references in the brief as the documents were not part of the record.

{¶7} The lower court granted ODJFS' motion to strike and affirmed the decision of ODJFS. In so doing, the lower court relied, in part, on Daugherty v. Wallace, 87 Ohio App.3d 228 (2d Dist.1993), for the proposition that there is no fundamental right to receive welfare benefits and for the notion that Article I, Section 1 of the Ohio Constitution does not guarantee a minimal amount of safety to its citizens.

{¶8} Mr. King has appealed, pro se, raising five assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT LACKED JURISDICTION TO ENTER A JUDGMENT AS THERE WAS A RELATED CASE PENDING IN THE SUPREME COURT OF OHIO WHICH WOULD ULTIMATELY AFFECT WHETHER OR NOT THE JUDGE COULD PRESIDE OVER THE CASE.

{¶9} Mr. King argues in his first assignment of error that the lower court lacked jurisdiction to enter judgment solely because he had filed a complaint for a writ of prohibition in the Supreme Court of Ohio.

{¶10} "[S]ubject matter jurisdiction cannot be waived and may be raised at any time[.] Generally, issues related to subject matter jurisdiction are reviewed de novo." (Internal quotations and citation omitted.) Weber v. Devanney, 9th Dist. Summit Nos. 28876, 28938, 2018-Ohio-4012, ¶ 11; see also Galloway v. Firelands Local School Dist. Bd. of Edn., 9th Dist. Lorain No. 12CA010280, 2013-Ohio-4264, ¶ 6.

{¶11} Mr. King has not demonstrated that the lower court lacked subject matter jurisdiction. "[T]he filing of a complaint for an original action and/or an application for an alternative writ does not automatically stay the underlying action." France v. Celebrezze, 8th Dist. Cuyahoga No. 98147, 2012-Ohio-2072, ¶ 8. Absent the granting of a writ of prohibition, the lower court retained jurisdiction to determine its own jurisdiction and to proceed to judgment if it determined it possessed jurisdiction. See id. Thus, the mere filing of a complaint for a writ of prohibition did not deprive the lower court of jurisdiction.

{¶12} Mr. King's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

REVISED CODE SECTIONS 119.12(K), 5101.35(E)(4), AND SUMMIT CO. LOC. R. 19.04 ARE UNCONSTITUTIONAL AS APPLIED TO THIS ADMINISTRATIVE APPEAL IN THAT APPELLANT KING HAS MADE A FACIAL CHALLENGE TO THE CONSTITUTIONALITY OF THE STATE AGENCY ACTION AND THAT THE INCREASED BURDEN OF PROOF REQUIRED MEANS THAT A REFUSAL TO CONSIDER ALL RELEVANT EVIDENCE DENIES APPELLANT KING OF HIS FEDERAL AND STATE CONSTITUTIONAL RIGHT TO MEANINGFUL ACCESS TO THE COURTS AS GUARANTEED BY THE FIRST AMENDMENT TO THE US. CONSTITUTION AND ARTICLE I [ ] SECTION 16 OF THE OHIO CONSTITUTION. [SIC.]

{¶13} Mr. King argues in his second assignment of error that R.C. 119.12(K) and 5101.35(E)(4), as well as Summit Cty. Loc.R. 19.04, are unconstitutional as applied because they denied Mr. King's right to meaningful access to the courts.

{¶14} An administrative agency has no authority to declare a legislative enactment unconstitutional. See Reading v. Pub. Util. Comm., 109 Ohio St.3d 193, 2006-Ohio-2181, ¶ 14. Nonetheless, "facial and as-applied constitutional challenges can be raised on further appeal from an administrative agency to a court." State ex rel. Kingsley v. State Emp. Relations Bd., 130 Ohio St.3d 333, 2011-Ohio-5519, ¶ 18.

However, generally an as-applied challenge must be first raised at the agency level in order to allow for development of the factual record. See Reading at ¶ 14-16; see also Wymsylo v. Bartec, Inc., 132 Ohio St.3d 167, 2012-Ohio-2187, ¶ 22 ("Because an as-applied challenge depends upon a particular set of facts, this type of constitutional challenge to a rule must be raised before the administrative agency to develop the necessary factual record.").

{¶15} While Mr. King raised these arguments in the lower court, nothing in the record suggests he raised them before the administrative agency. Moreover, Mr. King has not explained why the rule outlined in Reading would not apply to the facts of his case. See App.R. 16(A)(7). Mr. King's argument is overruled based on the foregoing.

{¶16} Mr. King's second assignment of error is overruled.

ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED IN RELYING UPON THE CASE OF DAUGHTERY V. WALLACE, 87 OHIO APP.3D 228; 621 N.E.2D 1374 (2ND DIST. 1993) TO CONCLUDE THAT THE ELIMINATION OF THE DFA PROGRAM AS ENACTED BY SECTION 105.01 OF 2017 AM: SUB. H.B. NO. 49 DID NOT VIOLATE APPELLANT KING'S CONSTITUTIONAL RIGHT TO SAFETY UNDER ARTICLE 1 SECTION 1 OF THE OHIO CONSTITUTION. [SIC.]

ASSIGNMENT OF ERROR IV

THE ELIMINATION OF THE DFA PROGRAM AS ENACTED BY SECTION 105.01 OF 2017 AM. SUB. H.B. NO 49 IS UNCONSTITUTIONAL AS A VIOLATION OF APPELLANT KING'S RIGHT TO SAFETY UNDER ARTICLE I SECTION 1 OF THE OHIO CONSTITUTION. [SIC.]

{¶17} Mr. King argues in his third assignment of error that the trial court erred in relying on Daugherty, 87 Ohio App.3d at 232-239, for the proposition that Am.Sub.H.B. No. 49 did not violate his constitutional right to safety. Specifically, Mr. King argues that, unlike the benefits in Daugherty, his benefits were not "welfare benefit[s.]" Thus, he maintains Daugherty is inapplicable. Mr. King argues in his fourth assignment of error that the enactment of the foregoing bill violated his constitutional right to safety. Essentially, Mr. King seems to argue that the state had a duty to continue providing him benefits and the failure to do so violated his right to safety. Mr. King maintains that his challenge is a facial challenge.

{¶18} A facial challenge need not be first raised in an administrative agency proceeding. See Reading, 2006-Ohio-2181, ¶ 16. This is so because "[e]xtrinsic facts

are not needed to determine whether a statute is unconstitutional on its face." Id. at 15.

A facial challenge alleges that a statute, ordinance, or administrative rule, on its face and under all circumstances, has no rational relationship to a legitimate governmental purpose. Facial challenges to the constitutionality of a statute are the most difficult to mount successfully, since the challenger must establish that no set of circumstances exists under which the act would be valid. If a statute is unconstitutional on its face, the statute may not be enforced under any circumstances. When determining whether a law is facially invalid, a court must be careful not to exceed the statute's actual language and speculate about hypothetical or imaginary cases. Reference to extrinsic facts is not required to resolve a facial challenge.

(Internal citations omitted.) Wymsylo, 2012-Ohio-2187, at ¶ 21.

{¶19} Mr. King challenges the legislative enactment that eliminated his DFA benefits. He asserts that the elimination of the program violates his constitutional right to safety. See Ohio Constitution, Article I, Section 1.

{¶20} Section 1, Article I of the Ohio Constitution provides that "[a]ll men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

{¶21} Irrespective of whether this Court agrees with the trial court's categorization of Mr. King's benefits as welfare benefits, this Court does agree the language in Daugherty is applicable to the facts of this case.

{¶22} Daugherty analyzed the language in the provision of the Ohio Constitution at issue and concluded that the clause provides that "an individual has an inalienable right to seek and obtain happiness and safety without undue state interference, but the Ohio Constitution clearly places no obligation upon the state to provide that happiness and safety." Daugherty, 87 Ohio App.3d at 235. "To conclude that the conjunctive clauses in Section 1, Article I create constitutional obligations would potentially thrust upon the back of state government the affirmative duty and responsibility for providing for practically every aspect of its citizens' lives." Id. "Were we to so interpret these clauses, we would be forced to recognize that the state is responsible for providing for each citizen minimal enjoyment of life, acquisition of minimal property, and obtainment of minimal happiness, as well as a minimal amount of safety. Obviously, such an interpretation of the constitutional language would be untenable." Id.

{¶23} We agree, that, instead, "the language of Section 1, Article I must be interpreted as a guarantee of rights." Id. "The entire clause, when read as a whole, must be interpreted to place a restriction on the exercise of governmental powers and not to bestow affirmative obligations on the state." Id. "The state is restricted by the clause from wholly interfering with a citizen's inalienable right to pursue and enjoy life and liberty, to acquire and possess and protect his property, and to seek and obtain happiness and safety, but has no affirmative duty to provide for the exercise of these inalienable rights." Id.

{¶24} Given those contours, Mr. King has not explained how the elimination of the DFA benefit program constituted a violation of his right to safety. See App.R. 16(A)(7).

{¶25} Mr. King's third and fourth assignments of error are overruled.

ASSIGNMENT OF ERROR V

THE ELIMINATION OF THE DFA PROGRAM AS ENACTED BY SECTION 105.01 OF 2017 AM. SUB. H.B. NO. 49 VIOLATES APPELLANT KING'S RIGHT TO EQUAL PROTECTION AND DUE PROCESS UNDER SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 2 OF THE OHIO CONSTITUTION. [SIC.]

{¶26} Mr. King argues in his fifth assignment of error that the elimination of the DFA benefit program violated his right to equal protection. Specifically, he maintains that the classifications under section 812.40 of Am.Sub.H.B. No. 49 violate the Equal Protection Clauses of the United States and Ohio Constitutions. He contends that he is raising a facial challenge. While Mr. King mentions the Due Process Clause in his assignment of error, he has developed no argument that his due process rights were violated. See App.R. 16(A)(7). Accordingly, this Court will not further address his due process challenge.

{¶27} "The mere fact that a statute discriminates does not mean that the statute must be unconstitutional." Roseman v. Firemen & Policemen's Death Benefit Fund, 66 Ohio St.3d 443, 446 (1993). "In determining whether a statute is unconstitutional because it violates the right to equal protection, we first must examine the class distinction drawn to decide if a suspect class or a fundamental right is involved. If no suspect class or fundamental right is involved, the classification will be subject to a 'rational basis' level of scrutiny." Id. at 447.

{¶28} The relevant portion of section 812.40 of Am.Sub.H.B. No. 49 provides:

(A) The repeal of sections 5115.01, 5115.02, 5115.03, 5115.04, 5115.05, 5115.06, 5115.07, 5115.20, 5115.22, and 5115.23 and the amendment of sections 126.35,

131.23, 323.01, 323.32, 329.03, 329.051, 2151.43, 2151.49, 3111.04, 3113.06, 3113.07, 3119.05, 5101.16, 5101.17, 5101.18, 5101.181, 5101.184, 5101.26, 5101.27, 5101.28, 5101.33, 5101.35, 5101.36, 5117.10, 5123.01, 5168.02, 5168.09, 5168.14, 5168.26, 5502.13, 5709.64, and 5747.122 of the Revised Code take effect on December 31, 2017.

(B) Notwithstanding the provisions of Chapter 5115. of the Revised Code, on and after the effective date of this section and until December 31, 2017, all of the following apply to the Disability Financial Assistance Program:

(1) Beginning July 1, 2017, the Department of Job and Family Services shall not accept any new application for disability financial assistance.

(2) Before July 31, 2017, the Department shall notify the following individuals that benefits shall terminate on July 31, 2017:

(a) Recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the federal Social Security Administration and who have received a denial of reconsideration from the Administration on or before July 1, 2017;

(b) Recipients who do not have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and who have received from the Administration on or before July 1, 2017, an initial denial of benefits or denial of reconsideration.

(3) Beginning on July 1, 2017, and ending on October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have not received a denial of reconsideration from the Social Security Administration.

(4) After October 1, 2017, the Department shall provide disability financial assistance benefits only to recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Social Security Administration and have not received a denial of reconsideration from the Administration.

{¶29} Mr. King argues that the classifications created should be subject to a higher level of scrutiny because they involve "disabled persons[.]" He argues under either strict or intermediate scrutiny the enactment would be unconstitutional. However, the classifications created by the enactment do not differentiate between people based upon disability. Instead, essentially the enactment outlines the timing of when a person's DFA benefits will terminate based primarily upon the status of the person's application for federal benefits.

{¶30} The United States Supreme Court has stated that, "[i]n the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some reasonable basis, it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." (Internal quotations omitted.) Dandridge v. Williams, 397 U.S. 471, 485 (1970); Richardson v. Belcher, 404 U.S. 78, 81 (1971), citing Dandridge at 487. "It is enough that the State's action be rationally based and free from invidious discrimination." Dandridge at 487; see also Roseman, 66 Ohio St.3d at 445, fn. 1 (noting that the federal and Ohio Equal Protection Clauses place "essentially the same limitations on governmental action").

{¶31} Mr. King has developed no argument that the enactment at issue would not pass a rational basis review. See App.R. 16(A)(7); see also Daugherty, 87 Ohio App.3d at 244 (concluding that allocating scarce resources to those most in need while attempting to balance the budget is a legitimate state objective). Thus, Mr. King has not met his burden to demonstrate error on appeal.

{¶32} Mr. King's fifth assignment of error is overruled.

III.

{¶33} Mr. King's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

CALLAHAN, P.J.

HENSAL, J.

CONCUR.

APPENDIX B

King v. Ohio Dept. of Job & Fam. Servcs., Summit C.P. No. CV201793744 (unpublished Oct. 12, 2018)

Judgment Entry Affirming Agency Decision

On September 8, 2017, the Plaintiff-Appellant, Derrick Martin King, filed this administrative appeal from the August 30, 2017 final decision of the Ohio Department of Job and Family Services ("ODJFS") that terminated his Disability Financial Assistance ("DFA") benefits naming ODJFS as Defendant-Appellee.

The record was filed on October 12, 2017. On October 14, 2017, Plaintiff-Appellant filed a Motion to Supplement the Record. This court denied Plaintiff-Appellant's motion on October 14, 2017. On October 20, 2017, Plaintiff-Appellant filed a Notice of Appeal with the Ninth District Court of Appeals. On January 3, 2018, the Ninth District Court of Appeals dismissed Plaintiff-Appellant's appeal for lack of jurisdiction. On January 5, 2018, Plaintiff- Appellant filed a Notice of Appeal to the Ohio Supreme Court. On April 25, 2018, the Ohio Supreme Court declined jurisdiction over the case. On May 24, 2018, Plaintiff-Appellant filed a Motion for Continuance of the briefing schedule in this administrative appeal. This court granted that request on June 19, 2018 and set a briefing schedule. The schedule is now complete, and the issues raised by this administrative appeal are now deemed submitted.

This administrative appeal arises from the termination of Plaintiff-Appellant's DFA benefits. The ODJFS terminated Plaintiff-Appellant's DFA benefits because the DFA program was ending following the enactment of Am. Sub. H. B. No. 49. Plaintiff-Appellant appealed the ODJFS's decision.

Appeals from administrative appeal decisions issued by ODJFS are authorized by R.C. 5101.35(E), which incorporates most of R.C. 119.12. See R.C. 5101.35(E). The review required by R.C. 119.12 is a restricted one. The court's inquiry is limited to deciding whether the administrative appeal decision is supported by reliable, probative, and substantial evidence and is in accordance with law. Our Place, Inc. v. Ohio Liquor Control Comm., 63 Ohio St.3d 570, 571 (1992); R.C. 119.12. If the decision meets these criteria, it must be affirmed. See Ward v. Ohio Dep't of Job & Family Servs., 9th Dist. Summit No. 27621, 2015-Ohio-5539, ¶ 11.

The Ohio Supreme Court has further described this inquiry as follows:

> The evidence required by R.C. 119.12 can be defined as follows: (1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the

> evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. Our Place at 571 (footnotes omitted).

The review required by R.C. 119.12 is not a trial de novo or an appeal solely on questions of law, but if there are factual issues the court conducts a hybrid review by appraising witness credibility, the probative character of the evidence, and the weight thereof. See Lies v. Veterinary Medical Bd., 2 Ohio App.3d 204, 207 (1st Dist. 1981), quoting Andrews v. Bd. Of Liquor Control, 164 Ohio St. 275, 280, 131 N.E.2d 390 (1955). The court may reevaluate the credibility of the evidence, with "due deference to the administrative resolution of evidentiary conflicts." Univ. of Cincinnati v. Conrad, 63 Ohio St.2d 108, 111, 407 N.E.2d 1265 (1980) (per curium); see also Ward at ¶ 11.

In addition, a court must give due deference to the agency's construction of a statute or rule enforced by the agency. See Leon v. Ohio Bd. of Psych., 63 Ohio St.3d 683, 687, 590 N.E.2d 1223 (1992), citing Lorain City Bd. of Educ. v. State Emp. Rel. Bd., 40 Ohio St.3d 257, 533 N.E.2d 264 (1988). Reviewing courts should follow the construction given by the agency unless it is unreasonable or impermissible. See Leon; Morning View Care Center—Fulton v. Ohio Dept. of Human Servs., 148 Ohio App.3d 518, 533, 2002-Ohio-2878 (10th Dist). A court's review is confined to the record as certified to it by the agency. See R.C. 119.12(K).

At the outset, the court must address the various documents Plaintiff-Appellant attaches to his merits brief. The court previously denied Plaintiff-Appellant's request to supplement the record. Pursuant to R.C. 119.12(K):

Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

Again, these materials do not constitute "newly discovered evidence" under R.C. 119.12(K). The court strikes the documents attached to Plaintiff-Appellant's merits brief and will not consider them in this administrative appeal.

Whether Appellee is required to file a transcript depends on the court's application of R.C. 5101.35(E)(4), which provides as follows:

The department shall be required to file a transcript of the testimony of the state hearing with the court only if the court orders the department to file the transcript. The court shall make such an order only if it finds that the department and the

appellant are unable to stipulate to the facts of the case and that the transcript is essential to a determination of the appeal. The department shall file the transcript not later than thirty days after the day such an order is issued.

After consideration, the Court does not find that production of the transcript is essential to the determination of this appeal. Appellant's appeal involves the termination of the Disability Financial Assistance program in Ohio. Appellant contends he was denied a fair hearing before the hearing officer because he was not permitted to present his arguments regarding the constitutionality of the legislation terminating the DFA program. This is simply not essential to the court's determination of Appellant's appeal. The court further does not find R.C. 5101.35(E)(4) or Loc.R. 19.04 to be unconstitutional.

Turning to the merits of Plaintiff-Appellant's appeal, this court may not reexamine the facts or evidence before the ODJFS. The record indicates the DFA benefits program was terminated by the legislature effective July 31, 2017. Plaintiff-Appellant's benefits were automatically terminated at that time. Plaintiff-Appellants argued the termination of his benefits was unconstitutional. ODJFS did not find that argument well-taken as the State of Ohio was not required to have a DFA program. The court undertook a review of Am. Sub. H. B. No. 49. The DFA program provided under Chapter 5115 of the Revised Code was terminated after enactment of Am. Sub. H. B. No. 49. After a thorough review of the record, the court finds that there was competent, credible evidence to support the conclusion made by ODJFS.

Plaintiff-Appellant further challenges the ODJFS decision on the basis that it was not in accordance with the law because the repeal of the DFA program violates his right to equal protection under the Fourteenth Amendment and his right to safety under the Ohio Constitution.

The Ninth District Court of Appeals previously provided the framework of analysis when a party challenges a statute on equal protection grounds in Clark v. Joseph, 95 Ohio App. 3d 207(1994):

The guarantee of equal protection does not prohibit states from ever treating different people differently:

The equal protection clause guarantees that similar individuals will be dealt with in a similar manner by the government. It does not reject the government's ability to classify persons or 'draw lines' in the creation and application of laws, but it does guarantee that those classifications will not be based upon impermissible criteria or arbitrarily used to burden a group of individuals. If the government classification relates to a proper governmental purpose, then the classification will be upheld. Such a classification does not violate the guarantee when it distinguishes persons

as 'dissimilar' upon some permissible basis in order to advance the legitimate interests of society. Those who are treated less favorably by the legislation are not denied equal protection of the law because they are not similarly situated to those who receive the benefit of the legislative classification. Nowak & Rotunda, Constitutional Law (4 Ed.1991) 570, Section 14.2.

Different types of governmental classifications are subjected to different standards of equal protection analysis. Classifications based upon race or national origin and classifications which affect a person's fundamental rights are unconstitutional unless they are narrowly tailored to meet a compelling or overriding government interest (the "strict scrutiny test"). Id. at 575, Section 14.3. Classifications based on gender or illegitimacy must have a substantial relationship to an important government interest (the "intermediate test"). Id. At 576, Section 14.3. Other classifications will be upheld if it is conceivable that the classification bears a rational relationship to the achievement of a legitimate state interest (the "rational relationship test"). Id. at 574-575, Section 14.3.

Here, there is no basis to impose "strict scrutiny" regarding the enactment of Am. Sub. H. B. No. 49. Under either "rational basis" or "intermediate scrutiny" the elimination of the DFA program was related to the legitimate government interest of repealing a statutory benefit system that the legislature chose to eliminate. Plaintiff-Appellant's argument that his right to equal protection of law under the Fourteenth Amendment was violated is not well-taken and overruled as a result.

In addition, Ohio courts have specifically found that there is no fundamental right to receive welfare benefits in Ohio and that the state is not obligated by Section 1, Article I to provide a minimal amount of safety to its citizens. Daughtery v. Wallace, 87 Ohio App.3d 228, 239, (2d Dist. 1993).

Based on the above, the court affirms the decision of the Ohio Department of Jobs and Family Services.

This is a final appealable order and there is no just cause for delay.

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal. Within three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket.

IT IS SO ORDERED.

/s/ Judge Jason T. Wells

JUDGE JAY WELLS

APPENDIX C

In re Derrick Martin King, ODJFS No. 5086197885, Appeal No. 3217126

August 30, 2017 Administrative Appeal Decision

SUMMARY

Appellant appeals the state hearing decision which overruled an appeal regarding the termination of Disability Financial Assistance (DFA).

ANALYSIS

The assistance group is Appellant and the Agency sent a termination notice July 10, 2017 effective July 31, 2017. Appellant's SSI claim was denied December 24, 2014 and is on appeal.

On July 8, 2017 the Ohio Department of Job and Family Services (ODJFS) completed a match review of all open D FA cases. Per Ohio Revised Code 812.40 auto-termination of benefits was proposed for those individuals who had received initial denial or denial at reconsideration of SSI/SSDI applications prior to July 1, 2017. Notice was issued July 10, 2017 proposing termination of DFA because the program was ending.

An action transmittal #265 of July 3, 2017 provides in part that:

Background:

The Disability Financial Assistance Program (DFA) is a state and county-funded program which provides cash assistance to persons who meet DFA program requirements and who are ineligible for any financial assistance program supported in whole or in part by federal funds (e.g., Ohio Works First (OWF), Supplemental Social Security Income (SSI) or Social Security Disability Insurance (SSDI)). No federal regulations govern the administration of the DFA program, in accordance with Section 812.40 of the Ohio Revised Code, the DFA program is being repealed; State funding will no longer be available and the program will end effective December 31, 2017.

New Policy:

Effective July 1. 2017, the guidance provided below shall supersede any existing rule, policy guidance or training material issued by the Ohio Department of Job and Family Services (ODJFS).

- Any new application (or reapplications) for DFA received on or after July 1, 2017 must be denied. A denial notice must be issued to the applicant.

- Any DFA recipient who has a pending application for SSI or SSDI with the Social Security Administration, and who has ever received a denial of SSI or SSDI at the reconsideration appeal level on or before July 1, 2017 shall be terminated effective 7/31/2017 prior notice of adverse action and fair hearing rights.

- Any DFA recipient who does not have a pending application for SSI or SSDI with the Social Security Administration, and who has ever received an initial denial of SSI or SSDI on or before July 1, 2017 shall be terminated effective July 31, 2017 with prior notice of adverse action and fair hearing rights.

- Any DFA recipient who receives a denial of SS/ or SSD/ at the reconsideration appeal level after July 1, 2017 shall be terminated with prior notice of adverse action and fair hearing rights.

- Any DFA recipient who does not have an application for SS/ or SSDJ pending with the Social Security Administration on or before September 30, 2017, shall be terminated with prior written notice of adverse action ooh fair hearing rights.

- Any DFA recipient still in receipt of benefits on December 1. 2017, shall be terminated effective December 31, 2017. Recipients shall be provided prior written notice off the termination.

Appellant requested a subpoena for all documents on file with the Ohio Department of Job and Family Services and did not provide any reason for the request. The hearing decision determined that it could not determine if the information was essential to Appellant's case per Ohio Admin. Code 5101:6-5-01.

In his request for administrative appeal Appellant argues the termination of the program is unconstitutional. As a program of the state which it is not required to have, this argument is not well taken.

The DFA program is ending and Appellant fits the criteria for termination at this time.

DECISION

The state hearing decision is **AFFIRMED.**

David Robertson
Administrative Appeal Officer

Margaret Adams
Concur

Lewis George
Chief Legal Counsel

08/30/2017

APPENDIX D

In re Derrick Martin King, ODJFS No. 5086197885CRISE, Appeal No. 3217126 (Unpublished Aug. 16, 2017)

State Hearing Officer Decision Affirming Decision to Terminate Benefits

ISSUE SECTION

Appeal #3217126 Disability Financial Assistance (DFA)

The issue is whether the County Department of Job and Family Services' (CDJFS) termination of the Appellant's eligibility for DFA as a result of the repeal of the DFA program is correct. The termination is affirmed.

PROCEDURAL MATTERS

A state hearing was conducted on August 7, 2017 with the Appellant and CDJFS representative Beth Lada testifying under oath. An appeal summary was received. A document was also received from the Appellant. Appellant is in receipt of fair hearing benefits as he requested a timely hearing.

Note: Prior to the hearing, Appellant submitted a subpoena duces tecum request to the Bureau of State Hearings requesting documents related to the elimination of the DFA program.

FINDINGS OF FACT

1. Appellant was the only member of the Of A assistance group.

2. On July 10, 2017, the CDJFS sent notice to the Appellant proposing to terminate DFA eligibility.

CONCUSIONS OF POLICY

Policy

Subject to all other eligibility requirements established by this chapter and the rules adopted under it for the disability financial assistance program, a person may be eligible for disability financial assistance.

Ohio Administrative Code Section 5101:6-5-01(F) discusses subpoenas. Section (1) indicates that an individual may request, "at least five calendar days prior to the date of the state hearing, that ODJFS issue a subpoena to compel the presence of documents and witnesses that would not otherwise be available and that are

essential to the requesting party's case." Under Section (2), the hearing authority is granted the authority to determine whether such subpoenas shall be issued and whether subpoenaed individuals shall participate in person or by telephone. If a subpoena request is denied, the reason for denial shall be clearly explained in the state hearing decision.

Analysis

Concerning the proposed termination, Appellant argued that the termination of DFA is a violation of his right to equal protection of the laws and a violation under the Ohio Constitution. Appellant requested copies of all documents on file with the Ohio Department of Job and Family Services. Although the request was received at least five (5) prior to the hearing, Appellant failed to provide a reason for the request. Without this necessary information, I cannot find that the requested information was essential to Appellant's case. Furthermore, the Appellant's case information is otherwise available to the Appellant for viewing at the Agency.

The Appellant's testified he had applied for SSI in July 2014. The application was denied on appeal on December 24, 2014. The SSI application is currently at the Appeals Council level.

According to the Ohio Revised Code, a person may be eligible for disability financial assistance subject to all other eligibility requirements established the rules adopted under it for the disability financial assistance program by the State. The DFA program is being repealed by the State as State Effective July 1, 2017. any new application (or reapplications) for DFA received on or after July 1, 2017 must be denied. Any DFA recipient who have a pending application for SSI or SSDI with the Social Security Administration, and who have ever received a denial of SSI or SSDI at the reconsideration appeal level on or before July 1, 2017 shall be terminated effective 7/31/2017 with prior notice of adverse action and fair hearing rights. MY DFA recipient who does not have a pending application for SSI or SSDI with the Social Security Administration. and who has ever received an initial denial of SSI or SSDI on or before July 1, 2017 shall be terminated effective July 31, 2017 with prior notice of adverse action and fair hearing rights. Any DFA recipient who receives a denial of SSI or SSDI at the reconsideration appeal level after July 1, 2017 shall be terminated with prior notice of adverse action and fair hearing rights. Any DFA recipient who does not have an application for SSI or SSDI pending with the Social Security Administration on or before September 30, 2017, shall be terminated with prior written notice of adverse action with fair hearing rights. Any DFA recipient still in receipt of benefits on December 1, 2017, shall be terminated effective December 31, 2017.

Based on the testimony provided, the Appellant falls within the category of any DFA recipient who has a pending application for SSI or SSDI with the Social

Security Administration, and who has ever received a denial of SSI or SSDI at the reconsideration appeal level on or before July 1, 2017.

Therefore, the CDJFS's termination of DFA eligibility for the Appellant is supported.

HEARING OFFICER'S RECOMMENDATION

Based on the record and policy before me I recommend this appeal be overruled.

FINAL DECISION AND ADMINISTRATIVE ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendation above is adopted and the appeal is overruled.

Domingo Ramos
Hearing Authority
08/16/2017

APPENDIX E

King v. Ohio Dept. of Job & Fam. Servcs, 157 Ohio St.3d 1440, 2019-Ohio-4211,132 N.E.3d 713

(Oct. 15, 2019)

Judgment Entry Declining Jurisdiction

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Summit County Court of Appeals; No. 29198)

/s/ Maureen O'Connor
MAUREEN O'CONNOR
Chief Justice

APPENDIX F

King v. Ohio Dept. of Job & Fam. Servcs., 157 Ohio St.3d 1525, 2019-Ohio-5327, 137 N.E.3d 110

(Dec. 31, 2019)

Judgment Entry Declining Reconsideration

It is ordered by the court that the motion for reconsideration in this case is denied.

(Summit County Court of Appeals; No. 29198)

/s/ Maureen O'Connor
MAUREEN O'CONNOR
Chief Justice

APPENDIX G

King v. Ohio Dept. of Job & Fam. Servcs., Summit C.P. No. CV2017093744 (unreported Oct. 19, 2017)

Trial Court Journal Entry Denying Motion for Production of Written Transcript

This matter is before the Court on Appellant, Derrick Martin King's Motion for Production of Transcript. Appellee, Ohio Department of Job and Family Services responded in opposition. Whether Appellee is required to file a transcript depends on the Court's application of R.C. 5101.35(E)(4), which provides as follows:

The department shall be required to file a transcript of the testimony of the state hearing with the court only if the court orders the department to file the transcript. The court shall make such an order only if it finds that the department and the appellant are unable to stipulate to the facts of the case and that the transcript is essential to a determination of the appeal. The department shall file the transcript not later than thirty days after the day such an order is issued.

After consideration, the Court does not find that production of the transcript is essential to the determination of this appeal. Appellant's appeal involves the termination of the Disability Financial Assistance program in Ohio. Appellant contends he was denied a fair hearing before the hearing officer because he was not permitted to present his arguments regarding the constitutionality of the legislation terminating the Disability Financial Assistance program. This is simply not essential to the Court's determination of Appellant's appeal. Appellant's Motion for Production of Transcript is denied.

IT IS SO ORDERED.

/s/ Jason T. Wells
JUDGE JASON T. WELLS

APPENDIX H

King v. Ohio Dept, of Job & Fam. Servcs., 9th Dist. Summit No. 28816

(Unreported Dec. 28, 2017)

Journal Entry Dismissing Attempted Appeal

Upon review of the initial filings and the parties' responses to this Court's order, the Court concludes that it is without jurisdiction to consider the attempted appeal. Specifically, the orders appealed are not immediately appealable under R.C. 2505.02.

According to the initial filings, this matter began when the Ohio Department of Job and Family Services notified appellant that his Disability Financial Assistance Benefits would terminate due to elimination of the program. Appellant instituted an administrative appeal and ultimately appealed to the common pleas court. Appellant then filed three motions with that court: A motion to suspend termination of his disability benefits pending appeal pursuant to R.C. 119.12, a motion to supplement the record on appeal, and a motion for production of the transcript. The common pleas court denied all three motions, and appellant filed the instant appeal.

On October 24, 2017, this Court questioned its jurisdiction, asking the parties to demonstrate why the three orders are immediately appealable. Both parties have now responded. According to appellant, he has filed a second appeal involving similar issues and if the Court consolidates the two appeals, dismissal of the instant appeal will be moot. According to appellee, the three interlocutory orders are not immediately appealable for multiple reasons, including that appellant will not be precluded effective relief in an appeal after final judgment.

Upon review, we conclude that we are without jurisdiction to consider the attempted appeal. Section 3(B)(2), Article IV of the Ohio Constitution limits this Court's appellate jurisdiction to the review of judgments and final orders. R.C. 2505.02 defines a final order in pertinent part as:

- An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
- An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- An order that vacates or sets aside a judgment or grants a new trial;

- An order that grants or denies a provisional remedy and to which both of the following apply:
    - The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
    - The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

A "provisional remedy" is a "proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction* * *." R.C. 2505.02(A)(3).

Here, the two orders concerning the record are not final under any of the above provisions because they do not determine the action, vacate a judgment, deny a provisional remedy, preclude effective relief later, or fall within any other category set forth above.

The order denying the motion to suspend termination of disability benefits under R.C. 119.12 also fails to meet any of the above provisions. In particular, it is not final as a provisional remedy because section (b) of the provisional remedy test has not been met. A "meaningful or effective remedy" is considered unavailable if "[t]he proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage." *Katherine's Collection, Inc. v. Kleski,* 9th Dist. Summit No. 26477, 2013-Ohio-1530. Thus, to be final under R.C. 2505.02(8)(4), "relief after an appeal from a final judgment would have [to be] rendered ineffective or a delay in appealing would have [to render] appellate review moot." *Empower Aviation, L.L.C. v. Butler Cty. Bd. of Commrs.,* 185 Ohio App.3d 4 77, 2009-0hio-633 l (1st Dist.).

Here, appellant has neither demonstrated nor argued why he would be precluded effective relief absent an immediate appeal. Furthermore, according to appellee, the only alleged harm concerns lost income, which could be rectified in an appeal after final judgment. Upon review, we conclude that the order does not meet the finality requirements of R.C. 2505.02(8) and that we are without jurisdiction to consider the appeal.

The attempted appeal is dismissed. Costs are taxed to appellant.

The clerk of courts is ordered to mail a notice of entry of this judgment to the parties and make a notation of the mailing in the docket, pursuant to App.R. 30,

and to provide a certified copy of the order to the clerk of the trial court. The clerk of the trial court is ordered to provide a copy of this order to the judge who presided over the trial court action.

/s/ Lynne S. Callahan
JUDGE LYNNE S. CALLAHAN

Concur:

Teodosio, J.

Callahan, J.

APPENDIX I

King v. Ohio Dept. of Job & Fam. Servcs., 152 Ohio St.3d 1448, 2018-Ohio-1600, 96 N.E.3d 301 (Apr. 25, 2018)

Journal Entry Declining Jurisdiction

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Summit County Court of Appeals; No. 28816)

/s/ Maureen O'Connor
MAUREEN O'CONNOR
Chief Justice

APPENDIX J

Relevant Statutory Provisions (current and former)

Ohio Rev. Code 119.12

(A)

(1) Except as provided in division (A)(2) or (3) of this section, any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture under section 4301.252 of the Revised Code may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident.

(2) An appeal from an order described in division (A)(1) of this section issued by any of the following agencies shall be made to the court of common pleas of Franklin county:

(a) The liquor control commission;

(b) The Ohio casino control commission,

(b) The state medical board;

(c) The state chiropractic board;

(d) The board of nursing;

(e) The bureau of workers' compensation regarding participation in the health partnership program created in sections 4121.44 and 4121.441 of the Revised Code.

(3) If any party appealing from an order described in division (A)(1) of this section is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin county.

(B) Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin county, except that appeals from orders of the fire marshal issued under Chapter 3737. of the Revised Code may be to the court of common pleas of the county in which the building of the aggrieved person is located and except that appeals under division (B) of section 124.34 of the Revised Code from a decision of the state personnel board of review or a municipal or civil service township civil service commission

shall be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the department of rehabilitation and correction, to the court of common pleas of Franklin county.

(C) This section does not apply to appeals from the department of taxation.

(D) Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and stating that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal may, but need not, set forth the specific grounds of the party's appeal beyond the statement that the agency's order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The notice of appeal shall also be filed by the appellant with the court. In filing a notice of appeal with the agency or court, the notice that is filed may be either the original notice or a copy of the original notice. Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency's order as provided in this section. For purposes of this paragraph, an order includes a determination appealed pursuant to division (C) of section 119.092 of the Revised Code. The amendments made to this paragraph by Sub. H.B. 215 of the 128th general assembly are procedural, and this paragraph as amended by those amendments shall be applied retrospectively to all appeals pursuant to this paragraph filed before September 13, 2010, but not earlier than May 7, 2009, which was the date the supreme court of Ohio released its opinion and judgment in Medcorp, Inc. v. Ohio Dep't. of Job and Family Servs. (2009), 121 Ohio St.3d 622.

(E) The filing of a notice of appeal shall not automatically operate as a suspension of the order of an agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. If an appeal is taken from the judgment of the court and the court has previously granted a suspension of the agency's order as provided in this section, the suspension of the agency's order shall not be vacated and shall be given full force and effect until the matter is finally adjudicated. No renewal of a license or permit shall be denied by reason of the suspended order during the period of the appeal from the decision of the court of common pleas. In the case of an appeal from the Ohio casino control commission, the state medical board, or the state chiropractic board state chiropractic board, the court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal and the health, safety, and welfare of the public will not be threatened by suspension of the order. This provision shall not be construed to limit the factors the court may consider in

determining whether to suspend an order of any other agency pending determination of an appeal.

(F) The final order of adjudication may apply to any renewal of a license or permit which has been granted during the period of the appeal.

(G) Notwithstanding any other provision of this section, any order issued by a court of common pleas or a court of appeals suspending the effect of an order of the liquor control commission issued pursuant to Chapter 4301. or 4303. of the Revised Code that suspends, revokes, or cancels a permit issued under Chapter 4303. of the Revised Code or that allows the payment of a forfeiture under section 4301.252 of the Revised Code shall terminate not more than six months after the date of the filing of the record of the liquor control commission with the clerk of the court of common pleas and shall not be extended. The court of common pleas, or the court of appeals on appeal, shall render a judgment in that matter within six months after the date of the filing of the record of the liquor control commission with the clerk of the court of common pleas. A court of appeals shall not issue an order suspending the effect of an order of the liquor control commission that extends beyond six months after the date on which the record of the liquor control commission is filed with a court of common pleas.

(H) Notwithstanding any other provision of this section, any order issued by a court of common pleas or a court of appeals suspending the effect of an order of the Ohio casino control commission issued under Chapter 3772. of the Revised Code that limits, conditions, restricts, suspends, revokes, denies, not renews, fines, or otherwise penalizes an applicant, licensee, or person excluded or ejected from a casino facility in accordance with section 3772.031 of the Revised Code shall terminate not more than six months after the date of the filing of the record of the Ohio casino control commission with the clerk of the court of common pleas and shall not be extended. The court of common pleas, or the court of appeals on appeal, shall render a judgment in that matter within six months after the date of the filing of the record of the Ohio casino control commission with the clerk of the court of common pleas. A court of appeals shall not issue an order suspending the effect of an order of the Ohio casino control commission that extends beyond six months after the date on which the record of the Ohio casino control commission is filed with the clerk of a court of common pleas.

(I) Within thirty days after receipt of a notice of appeal from an order in any case in which a hearing is required by sections 119.01 to 119.13 of the Revised Code, the agency shall prepare and certify to the court a complete record of the proceedings in the case. Failure of the agency to comply within the time allowed, upon motion, shall cause the court to enter a finding in favor of the party adversely affected. Additional time, however, may be granted by the court, not to exceed thirty days,

when it is shown that the agency has made substantial effort to comply. The record shall be prepared and transcribed, and the expense of it shall be taxed as a part of the costs on the appeal. The appellant shall provide security for costs satisfactory to the court of common pleas. Upon demand by any interested party, the agency shall furnish at the cost of the party requesting it a copy of the stenographic report of testimony offered and evidence submitted at any hearing and a copy of the complete record.

(J) Notwithstanding any other provision of this section, any party desiring to appeal an order or decision of the state personnel board of review shall, at the time of filing a notice of appeal with the board, provide a security deposit in an amount and manner prescribed in rules that the board shall adopt in accordance with this chapter. In addition, the board is not required to prepare or transcribe the record of any of its proceedings unless the appellant has provided the deposit described above. The failure of the board to prepare or transcribe a record for an appellant who has not provided a security deposit shall not cause a court to enter a finding adverse to the board.

(K) Unless otherwise provided by law, in the hearing of the appeal, the court is confined to the record as certified to it by the agency. Unless otherwise provided by law, the court may grant a request for the admission of additional evidence when satisfied that the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the agency.

(L) The court shall conduct a hearing on the appeal and shall give preference to all proceedings under sections 119.01 to 119.13 of the Revised Code, over all other civil cases, irrespective of the position of the proceedings on the calendar of the court. An appeal from an order of the state medical board issued pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code, the state chiropractic board issued pursuant to section 4734.37 of the Revised Code, the liquor control commission issued pursuant to Chapter 4301. or 4303. of the Revised Code, or the Ohio casino control commission issued pursuant to Chapter 3772. of the Revised Code shall be set down for hearing at the earliest possible time and takes precedence over all other actions. The hearing in the court of common pleas shall proceed as in the trial of a civil action, and the court shall determine the rights of the parties in accordance with the laws applicable to a civil action. At the hearing, counsel may be heard on oral argument, briefs may be submitted, and evidence may be introduced if the court has granted a request for the presentation of additional evidence.

(M) The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial

evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law. The court shall award compensation for fees in accordance with section 2335.39 of the Revised Code to a prevailing party, other than an agency, in an appeal filed pursuant to this section.

(N) The judgment of the court shall be final and conclusive unless reversed, vacated, or modified on appeal. These appeals may be taken either by the party or the agency, shall proceed as in the case of appeals in civil actions, and shall be pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code. An appeal by the agency shall be taken on questions of law relating to the constitutionality, construction, or interpretation of statutes and rules of the agency, and, in the appeal, the court may also review and determine the correctness of the judgment of the court of common pleas that the order of the agency is not supported by any reliable, probative, and substantial evidence in the entire record.

The court shall certify its judgment to the agency or take any other action necessary to give its judgment effect.

Ohio Rev. Code § 5101.35 Appeals by applicant, participant or recipient.

(A) As used in this section:

(1)

(a) "Agency" means the following entities that administer a family services program:

(i) The department of job and family services;

(ii) A county department of job and family services;

(iii) A public children services agency;

(iv) A private or government entity administering, in whole or in part, a family services program for or on behalf of the department of job and family services or a county department of job and family services or public children services agency.

(b) If the department of medicaid contracts with the department of job and family services to hear appeals authorized by section 5160.31 of the Revised Code regarding medical assistance programs, "agency" includes the department of medicaid.

(2) "Appellant" means an applicant, participant, former participant, recipient, or former recipient of a family services program who is entitled by federal or state law to a hearing regarding a decision or order of the agency that administers the program.

(3)

(a) "Family services program" means all of the following:

(i) A Title IV-A program as defined in section 5101.80 of the Revised Code;

(ii) Programs that provide assistance under Chapter 5104. of the Revised Code;

(iii) Programs that provide assistance under section 5101.141, 5101.461, 5101.54, 5119.41, 5153.163, or 5153.165 of the Revised Code;

(iv) Title XX social services provided under section 5101.46 of the Revised Code, other than such services provided by the department of mental health and addiction services, the department of developmental disabilities, a board of alcohol, drug addiction, and mental health services, or a county board of developmental disabilities.

(b) If the department of medicaid contracts with the department of job and family services to hear appeals authorized by section 5160.31 of the Revised Code regarding medical assistance programs, "family services program" includes medical assistance programs.

(4) "Medical assistance program" has the same meaning as in section 5160.01 of the Revised Code.

(B) Except as provided by divisions (G) and (H) of this section, an appellant who appeals under federal or state law a decision or order of an agency administering a family services program shall, at the appellant's request, be granted a state hearing by the department of job and family services. This state hearing shall be conducted in accordance with rules adopted under this section. The state hearing shall be recorded, but neither the recording nor a transcript of the recording shall be part of the official record of the proceeding. Except as provided in section 5160.31 of the Revised Code, a state hearing decision is binding upon the agency and department, unless it is reversed or modified on appeal to the director of job and family services or a court of common pleas.

(C) Except as provided by division (G) of this section, an appellant who disagrees with a state hearing decision may make an administrative appeal to the director of job and family services in accordance with rules adopted under this section. This

administrative appeal does not require a hearing, but the director or the director's designee shall review the state hearing decision and previous administrative action and may affirm, modify, remand, or reverse the state hearing decision. An administrative appeal decision is the final decision of the department and, except as provided in section 5160.31 of the Revised Code, is binding upon the department and agency, unless it is reversed or modified on appeal to the court of common pleas.

(D) An agency shall comply with a decision issued pursuant to division (B) or (C) of this section within the time limits established by rules adopted under this section. If a county department of job and family services or a public children services agency fails to comply within these time limits, the department may take action pursuant to section 5101.24 of the Revised Code. If another agency, other than the department of medicaid, fails to comply within the time limits, the department may force compliance by withholding funds due the agency or imposing another sanction established by rules adopted under this section.

(E) An appellant who disagrees with an administrative appeal decision of the director of job and family services or the director's designee issued under division (C) of this section may appeal from the decision to the court of common pleas pursuant to section 119.12 of the Revised Code. The appeal shall be governed by section 119.12 of the Revised Code except that:

(1) The person may appeal to the court of common pleas of the county in which the person resides, or to the court of common pleas of Franklin county if the person does not reside in this state.

(2) The person may apply to the court for designation as an indigent and, if the court grants this application, the appellant shall not be required to furnish the costs of the appeal.

(3) The appellant shall mail the notice of appeal to the department of job and family services and file notice of appeal with the court within thirty days after the department mails the administrative appeal decision to the appellant. For good cause shown, the court may extend the time for mailing and filing notice of appeal, but such time shall not exceed six months from the date the department mails the administrative appeal decision. Filing notice of appeal with the court shall be the only act necessary to vest jurisdiction in the court.

(4) The department shall be required to file a transcript of the testimony of the state hearing with the court only if the court orders the department to file the transcript. The court shall make such an order only if it finds that the department and the appellant are unable to stipulate to the facts of the case and that the transcript is

essential to a determination of the appeal. The department shall file the transcript not later than thirty days after the day such an order is issued.

(F) The department of job and family services shall adopt rules in accordance with Chapter 119. of the Revised Code to implement this section, including rules governing the following:

(1) State hearings under division (B) of this section. The rules shall include provisions regarding notice of eligibility termination and the opportunity of an appellant appealing a decision or order of a county department of job and family services to request a county conference with the county department before the state hearing is held.

(2) Administrative appeals under division (C) of this section;

(3) Time limits for complying with a decision issued under division (B) or (C) of this section;

(4) Sanctions that may be applied against an agency under division (D) of this section.

(G) The department of job and family services may adopt rules in accordance with Chapter 119. of the Revised Code establishing an appeals process for an appellant who appeals a decision or order regarding a Title IV-A program identified under division (A)(4)(c), (d), (e), (f), or (g) of section 5101.80 of the Revised Code that is different from the appeals process established by this section. The different appeals process may include having a state agency that administers the Title IV-A program pursuant to an interagency agreement entered into under section 5101.801 of the Revised Code administer the appeals process.

(H) If an appellant receiving medicaid through a health insuring corporation that holds a certificate of authority under Chapter 1751. of the Revised Code is appealing a denial of medicaid services based on lack of medical necessity or other clinical issues regarding coverage by the health insuring corporation, the person hearing the appeal may order an independent medical review if that person determines that a review is necessary. The review shall be performed by a health care professional with appropriate clinical expertise in treating the recipient's condition or disease. The department shall pay the costs associated with the review.

A review ordered under this division shall be part of the record of the hearing and shall be given appropriate evidentiary consideration by the person hearing the appeal.

(I) The requirements of Chapter 119. of the Revised Code apply to a state hearing or administrative appeal under this section only to the extent, if any, specifically provided by rules adopted under this section.

Former Ohio Rev. Code § 5115.01 Disability financial assistance program established; eligibility (Repealed December 31, 2017).

(A) The director of job and family services shall establish the disability financial assistance program.

(B) Subject to all other eligibility requirements established by this chapter and the rules adopted under it for the disability financial assistance program, a person may be eligible for disability financial assistance only if one of the following applies:

(1) The person 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;

(2) On the day before the effective date of this amendment, the person was sixty years of age or older and one of the following is the case:

(a) The person was receiving or was scheduled to begin receiving financial assistance under this chapter on the basis of being sixty years of age or older;

(b) An eligibility determination was pending regarding the person's application to receive financial assistance under this chapter on the basis of being sixty years of age or older and, on or after the effective date of this amendment, the person receives a determination of eligibility based on that application.

Former Ohio Rev. Code § 5115.02 Ineligibility for assistance (Repealed December 31, 2017).

(A) An individual is not eligible for disability financial assistance under this chapter if any of the following apply:

(1) The individual is eligible to participate in the Ohio works first program established under Chapter 5107. of the Revised Code; eligible to receive supplemental security income provided pursuant to Title XVI of the "Social Security Act," 86 Stat. 1475 (1972), 42 U.S.C. 1383, as amended; or eligible to participate in or receive assistance through another state or federal program that provides financial assistance similar to disability financial assistance, as determined by the director of job and family services;

(2) The individual is ineligible to participate in the Ohio works first program because of any of the following:

(a) The time limit established by section 5107.18 of the Revised Code;

(b) Failure to comply with an application or verification procedure;

(c) The fraud control provisions of section 5101.83 of the Revised Code or the fraud control program established pursuant to 45 C.F.R. 235.112, as in effect July 1, 1996;

(d) The self-sufficiency contract provisions of sections 5107.14 and 5107.16 of the Revised Code;

(e) The minor parent provisions of section 5107.24 of the Revised Code;

(f) The provisions of section 5107.26 of the Revised Code regarding termination of employment without just cause.

(3) The individual, or any of the other individuals included in determining the individual's eligibility, is involved in a strike, as defined in section 5107.10 of the Revised Code;

(4) For the purpose of avoiding consideration of property in determinations of the individual's eligibility for disability financial assistance or a greater amount of assistance, the individual has transferred property during the two years preceding application for or most recent redetermination of eligibility for disability assistance;

(5) The individual is a child and does not live with the child's parents, guardians, or other persons standing in place of parents, unless the child is emancipated by being married, by serving in the armed forces, or by court order;

(6) The individual reside in a county home, city infirmary, jail, or public institution;

(7) The individual is a fugitive felon as defined in section 5101.26 of the Revised Code;

(8) The individual is violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under federal or state law.

(B)

(1) As used in division (B)(2) of this section, "assistance group" has the same meaning as in section 5107.02 of the Revised Code.

(2) Ineligibility under division (A)(2)(c) or (d) of this section applies as follows:

(a) In the case of an individual who is under eighteen years of age, the individual is ineligible only if the individual caused the assistance group to be ineligible to participate in the Ohio works first program or resides with an individual eighteen years of age or older who was a member of the same ineligible assistance group.

(b) In the case of an individual who is eighteen years of age or older, the individual is ineligible regardless of whether the individual caused the assistance group to be ineligible to participate in the Ohio works first program.

Former Ohio Rev. Code § 5115.04 Administration, supervision of program (Repealed December 31, 2017).

The department of job and family services shall supervise and administer the disability financial assistance program, subject to the following exceptions:

The department may require county departments of job and family services to perform any administrative function for the program, as specified in rules adopted by the director of job and family services.

If the department requires county departments to perform administrative functions under this division, the director shall adopt rules in accordance with section 111.15 of the Revised Code governing the performance of the functions by county departments. County departments shall perform the functions in accordance with the rules. The director shall conduct investigations to determine whether disability financial assistance is being administered in compliance with the Revised Code and rules adopted by the director.

If disability financial assistance payments are made by the county department of job and family services, the department shall advance sufficient funds to provide the county treasurer with the amount estimated for the payments. Financial assistance payments shall be distributed in accordance with sections 126.35, 319.16, and 329.03 of the Revised Code.

The department may enter into an agreement with a state agency whereby the state agency agrees to make eligibility determinations for the program. If the department enters into such an agreement, the department shall cover the administrative costs incurred by the state agency to make the eligibility determinations.

As used in this division, "state agency" has the same meaning as in section 117.01 of the Revised Code.

Former Ohio Rev. Code § 5115.05 Application, verification, reapplication procedures; voter registration application (Repealed December 31, 2017).

(A) The director of job and family services shall adopt rules in accordance with section 111.15 of the Revised Code establishing application and verification procedures, reapplication procedures, and other requirements the director considers necessary in the administration of the application process for disability financial assistance. The rules may require recipients of disability financial assistance to participate in a reapplication process two months after initial approval for assistance has been determined and at such other times as specified in the rules.

(B) Any person who applies for disability financial assistance shall receive a voter registration application under section 3503.10 of the Revised Code.

Former Ohio Rev. Code § 5115.06 Methods of payment; inalienability; exemption from attachment (Repealed December 31, 2017).

Assistance under the disability financial assistance program may be given by warrant, direct deposit, or, if provided by the director of job and family services pursuant to section 5101.33 of the Revised Code, by electronic benefit transfer. It shall be inalienable whether by way of assignment, charge, or otherwise, and is exempt from attachment, garnishment, or other like process.

Any direct deposit shall be made to a financial institution and account designated by the recipient. If disability financial assistance is to be paid by the director of budget and management through direct deposit, the application for assistance shall be accompanied by information the director needs to make direct deposits.

The director of job and family services may adopt rules for designation of financial institutions and accounts.

No financial institution shall impose any charge for direct deposit of disability financial assistance payments that it does not charge all customers for similar services.

APPENDIX K

Relevant Administrative Regulations (current and former)

Former Ohio Admin. Code 5101:1-5-01 The disability financial assistance program: definitions and payment standards (Repealed Oct. 1, 2018)

(A) What is the disability financial assistance program?

(1) Disability financial assistance (DFA) is a state and county-funded program which provides cash assistance to persons who meet DFA program requirements and who are ineligible for any financial assistance program supported in whole or in part by federal funds (e.g., Ohio works first (OWF), supplemental security income (SSI)). No federal regulations govern the administration of the DFA program.

(2) The county agency shall explore eligibility for DFA when a member of an assistance group: requests DFA; is ineligible for any financial assistance program supported in whole or in part by federal funds; and claims to be unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than nine months.

(a) DFA shall be authorized on an ongoing basis as long as all DFA eligibility factors are met.

(b) DFA shall not be issued as temporary assistance to applicants or recipients of OWF. DFA may be issued as temporary assistance to an assistance group pending federal categorical eligibility for SSI, if the individual is a member of one of the categories of covered individuals as set forth in paragraph (D) of this rule.

(B) What is the family group? (1) The DFA "family group" is defined as the assistance group (as set forth in paragraph (C) of this rule), and any persons related to any member of the assistance group by blood, adoption (i.e., parents and their children), or marriage who are living in the same home as the assistance group.

(a) The family group shall include all children, their siblings and half-siblings, under the age of eighteen who are living with their biological or adoptive parents. Additionally, a married individual who is living with his spouse must be included in the same family group with his spouse (the definition of marriage is set forth in rule 5101:1-3-03 of the Administrative Code). If the spouse has biological or adoptive children under age eighteen living with him, those children must also be included in the family group.

(b) A dependent child who is receiving DFA because the child is a covered individual as set forth in paragraph (D) of this rule, and who is living with someone who is standing in place of a parent who is eligible for DFA in his own right, shall not be included in that individual's family group.

(c) An individual who is living in a residential treatment center for substance abuse shall constitute his own family group, and shall not be in another family group while he remains in the residential treatment facility.

(d) The income and resources of all members of the family group are used in determining the eligibility of the assistance group for DFA, as set forth in rules 5101:1-5-30 and 5101:1-5-40 of the Administrative Code.

(e) The needs, income, and resources of the following individuals are excluded from the family group:

(i) OWF participants.

(ii) SSI recipients.

(iii) Individuals for whom federal, state or local foster care maintenance payments are made.

(iv) Individuals for whom federal, state or local adoption assistance payments are made.

(2) The family group is formed by selecting the following individuals:

(a) Siblings and half-siblings under the age of eighteen (including emancipated minors);

(b) The parent(s) of the children included in the family group;

(c) The spouse(s) of all members of the family group; and

(d) Any children of the spouse.

(C) How is the DFA assistance group formed?

(1) The DFA "assistance group" is defined as a group of applicants for or recipients of DFA who are living together and treated as a unit for purposes of determining eligibility for DFA and establishing the amount of DFA benefits for which the group is eligible. The assistance group is formed by selecting all of the covered individuals from the family group. The assistance group can be the same composition as the

family group, or a smaller group within the family group, depending upon the number of covered individuals within the family group.

(2) The DFA assistance group is formed by selecting the following covered individuals from the family group.

(a) When there are children, the DFA assistance group shall contain the following covered individuals:

(i) Siblings and half-siblings under the age of eighteen (including emancipated minors).

(ii) The parents of the children.

(iii) The spouse(s) of all members of the assistance group.

(iv) The spouse's children.

(b) When there are no children, the assistance group shall contain the following covered individuals:

(i) An individual; or

(ii) A married couple.

(D) Who is eligible for DFA? (1) 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 in accordance with rule 5101:1-5-20 of the Administrative Code.

(b) An individual who, on June 30, 2003, was sixty years of age or older and one of the following is the case:

(i) The individual was receiving or was scheduled to begin receiving financial assistance under Chapter 5115. of the Revised Code on the basis of being sixty years of age or older;

(ii) An eligibility determination was pending regarding the individual's application to receive financial assistance under Chapter 5115. of the Revised Code on the basis of being sixty years of age or older and, on or after July 1, 2003, the individual receives a determination of eligibility based on that application.

(2) DFA is the category of financial assistance for a minor child who meets the conditions set forth in paragraph (D) of this rule, and who is living with a nonrelated caretaker who is standing in place of the parent but does not meet the OWF living arrangement requirement set forth in rule 5101:1-3-03 of the Administrative Code. The individual standing in place of the parent must either be at least eighteen years old or emancipated. A referral to the children services agency may be appropriate in these nonrelative situations.

(E) Who is ineligible for DFA? An individual is not eligible for DFA if any of the following conditions set forth in this paragraph apply.

(1) The individual is eligible to participate in the OWF program established under Chapter 5107. of the Revised Code. An individual who is eligible for OWF solely due to their status as a specified relative as defined in section 5107.02 of the Revised Code, has the option to participate in the OWF program or the DFA program.

(2) The individual is eligible to receive SSI pursuant to Title XVI of the "Social Security Act," 86 Stat. 1475 (1972), 42 U.S.C. 1383 (2015), or SSDI pursuant to Title II of the Social Security Act, 42 U.S.C. 423 (11/2/2015).

(3) The individual is eligible to participate in or receive assistance through another state or federal program that provides financial assistance similar to DFA, as determined by the director of ODJFS.

(4) The individual is ineligible to participate in the OWF program because of any of the following:

(a) The time limit established by section 5107.18 of the Revised Code;

(b) Failure to comply with an application or verification procedure;

(c) The fraud control provisions of section 5101.83 of the Revised Code, or the fraud control program established pursuant to 45 C.F.R. 235.110, as in effect July 1, 1996;

(d) The self-sufficiency contract and related sanction provisions of sections 5107.14 and 5107.16 of the Revised Code;

(e) The minor parent provisions set forth in section 5107.24 of the Revised Code;

(f) The provisions of section 5107.26 of the Revised Code regarding termination of employment without just cause.

(5) Ineligibility under paragraphs (E)(4)(c) to (E)(4)(d) of this rule applies as follows:

(a) In the case of an individual who is under eighteen years of age, the individual is ineligible only if the individual caused the assistance group to be ineligible to participate in the OWF program or resides with an individual eighteen years of age or older who was a member of the same ineligible assistance group.

(b) In the case of an individual who is eighteen years of age or older, the individual is ineligible regardless of whether the individual caused the assistance group to be ineligible to participate in OWF.

(6) Except for those individuals determined ineligible pursuant to paragraph (E)(4)(f) of this rule, a member of a DFA assistance group who has quit or 5101:1-5-01 5 refused employment or training within the past thirty days without good cause is ineligible for DFA for thirty days beginning with the date of the refusal or termination of employment or training.

(7) The individual, or any of the other individuals included in determining the individual's eligibility for DFA, is involved in a strike, as defined in section 5107.10 of the Revised Code.

(8) The individual is an undocumented alien who fails to meet citizenship requirements.

(9) The individual became ineligible for SSI due to a failure to comply with SSI program requirements.

(10) For the purpose of avoiding consideration of property in determinations of the individual's eligibility for DFA or a greater amount of assistance, the individual has transferred property for less than fair market value during the two years preceding application for or most recent reapplication of eligibility for DFA.

(11) The individual is a child and does not live with the child's parents, guardians, or other persons standing in place of parents, unless the child is emancipated by being married, by serving in the armed forces, or by court order.

(12) The individual resides in a county home, city infirmary, jail or public institution.

(13) The individual is a fugitive felon as defined in section 5101.26 of the Revised Code who is fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony (or in the state of New Jersey, a high misdemeanor).

(14) The individual is violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under federal or state law for a felony.

The county agency shall utilize the following procedures when it has information that an individual may be ineligible under paragraph (E)(13) or (E)(14) of this rule:

(a) The county agency shall contact the appropriate law enforcement agency to give the law enforcement agency thirty days to determine if the individual is fleeing and to arrest or extradite the individual.

(b) If within the thirty days the law enforcement agency arrests or extradites the individual, the county agency shall take appropriate action to remove the individual from the assistance group if he or she is no longer a member of the household.

(c) If by the end of the thirty days the law enforcement agency has not been able to arrest or extradite the individual, the county agency shall take appropriate action to impose ineligibility under this paragraph for as long as the law enforcement agency continues to take appropriate action to arrest or extradite the individual and provides written documentation.

(d) If within the thirty days the law enforcement agency indicates it will not attempt to arrest or extradite the individual or that the individual is not fleeing, the county agency shall not impose ineligibility under this paragraph.

(F) For purposes of determining eligibility for any covered individuals in the home the ineligible individual/family is part of the DFA family group and the resources and income of the ineligible individual/family are countable to the family group.

(G) What are the income standards for DFA? (1) Need is defined as the deficit between the requirements of the family group according to the applicable DFA standard and the income available for immediate use.

(a) An assistance group with available countable income in excess of the appropriate DFA payment standard is not eligible regardless of whether other eligibility factors are met.

(b) An assistance group with available countable income less than the appropriate DFA payment standard is eligible for financial assistance in an amount equal to the difference between the appropriate DFA payment standard less the countable income or the DFA payment standard for the DFA covered individual(s), whichever is the lesser amount, provided all other eligibility factors are met.

(2) The assistance group must meet all eligibility criteria set forth in Chapter 5101:1-5 of the Administrative Code and must not have its needs met by another source of financial assistance.

(3) The amount of DFA benefits to be issued depends upon the number of DFA covered individuals in the DFA assistance group. The standard for the appropriate family/assistance group size is provided in paragraph (G)(5) of this rule.

(4) The DFA payment standard is the figure used in evaluating need and in determining eligibility for the DFA program. The payment standard is the figure which is used to calculate the actual DFA payment and from which all countable income is deducted.

(5) The following chart shows the DFA payment standard. Click here to view image.

Number in family/assistance group	DFA payment standard
1	$ 115
2	159
3	193
4	225
5	251
6	281
7	312
8	361
9	394
10	426
11	458
12	490
13	522

14	554
15	594
for each person above 15 add	40

(H) In order to confine DFA expenditures to appropriated state funds, the director of ODJFS, or his designee, may issue an order at any time suspending the approval of any new applications for DFA. The order will be distributed to all country agencies on the same day and will remain in effect until rescinded. During a program suspension, all new applicants will be advised that a suspension is in effect. All new applications will be denied during the same time that a suspension is in effect. No waiting lists will be established during the periods of suspension.

Former Ohio Admin. Code 5101:1-5-10 Disability assistance: nonfinancial eligibility requirements (Repealed Oct. 1, 2018)

(A) What is the residency requirement?

(1) An individual must be physically present in the state of Ohio with the intent to remain.

(2) An individual must apply for and receive assistance from the county in which he or she resides.

(3) Absence from the county for more than thirty days constitutes evidence of intent to establish residence elsewhere, unless a written statement has been submitted to indicate intent to return to the county, the reason for the absence and the expected date of return.

(B) What are the citizenship status requirements? Rules 5101:1-2-30, 5101:1-2-30.1, 5101:1-2-30.2, 5101:1-2-30.3 and5101:1-2-35 of the Administrative Code, regarding citizenship and sponsored aliens, are applicable for disability financial assistance (DFA).

(C) What is the living arrangement requirement? The living arrangement requirement is met unless the individual resides in one of the following:

(1) County home;

(2) City infirmary;

(3) Jail; or

(4) Public institution.

(D) Can a child receive DFA?

(1) A child who is emancipated may be eligible for DFA. Emancipation is established through marriage, service in the armed forces or through a court order. Emancipation is irrevocable, unless the marriage which emancipated the child is annulled.

(2) To be eligible for DFA a child must be disabled as described in paragraph (D)(1)(a) of rule 5101:1-5-01 of the Administrative Code.

(3) A minor is not eligible for DFA when the child does not live with parents, a guardian, or another individual standing in place of a parent who is at least eighteen years of age. Pregnant minors are subject to this requirement.

(E) What are the additional nonfinancial DFA eligibility requirements?

(1) Within thirty days of the date of applying for DFA the applicant shall:

(a) Have applied for or be in receipt of medicaid;

(b) Provide evidence that either a SSA-16-BK "Application for Disability Insurance Benefits" (www.ssa.gov eff. 1/2015) or a SSA-8000 "Application for Supplemental Security Income (SSI)" (www.ssa.gov eff. 1/2012) has been filed and is under review by the social security administration (SSA); and

(c) Sign the JFS 07319 "Authorization for Reimbursement of Interim Assistance Initial Claim or Post-Eligibility Case" (rev. 4/2014).

(2) Determinations by the social security administration (SSA):

(a) A DFA applicant or recipient shall not be eligible for DFA for one hundred and eighty days from the date of a denial, suspension or termination of social security disability insurance (SSDI) and/or SSI. For purposes of Chapter 5101:1-5 of the Administrative Code, an application with SSA shall be considered "denied" when it is no longer under administrative review by SSA (initial, reconsideration, hearing with an administrative law judge, or review by the appeals council) because the applicant exhausted or abandoned further administrative appeal.

(b) Each DFA recipient and applicant shall pursue an administrative reconsideration and/or administrative appeal of any denial by SSA. The assistance group shall report to the county agency the filing of a reconsideration, appeal, or administrative decision by SSA in accordance with rule 5101:1-2-20 of the Administrative Code.

Former Ohio Admin. Code 5101:1-5-20 Disability financial assistance: the determination of a disability (Repealed Oct. 1, 2018).

(A) What is the definition of disability? "Disability" for purposes of the disability financial assistance (DFA) program is defined in section 5115.01 of the Revised Code. "Disability" applies to an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than nine months.

(B) How is an individual determined to be disabled?

(1) For all individuals who applied for DFA prior to the effective date of this rule, the disability determination shall be made in accordance with this rule as it was in effect on that date.

(2) For all individuals who apply, reapply or require a continuing disability review (CDR) on or after the effective date of this rule, the determination shall be based on a current medical statement. For purposes of division 5101:1 of the Administrative Code, "current medical statement" means a JFS 07302 "Basic Medical" (10/2016) signed by a physician; and/or the JFS 07308 "Mental Functional Capacity Assessment" (10/2016) signed by a licensed physician, psychiatrist or licensed psychologist; and:

(a) The form indicates that the individual 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 a continuous period of not less than nine months; and

(b) The form is dated:

(i) For DFA applicants, no sooner than thirty days from the date of application and no later than ninety days from the date it was requested by the county agency; or

(ii) For DFA recipients undergoing a CDR, no sooner than thirty days from the CDR date and no later than ninety days from the date it was requested by the county agency.

(3) A county agency does not make a determination of disability.

(C) For how long shall a determination of disability remain in effect?

(1) Each individual determined to be disabled in accordance with paragraph (B) of this rule shall be assigned a CDR date.

(a) For individuals determined disabled under paragraph (B)(1) of this rule, the CDR date shall be determined according to this rule as it was in effect prior to the effective date of this rule.

(b) For individuals determined to be disabled under paragraph (B)(2) of this rule, the CDR date shall be ninety days prior to the DFA reapplication date established in accordance with paragraph (B) of rule 5101:1-2-10 of the Administrative Code.

(2) A determination of disability shall remain in effect until:

(a) A CDR is completed in accordance with paragraph (E) of this rule;

(b) The social security administration (SSA) has denied the individual's supplemental security income (SSI) or social security disability insurance (SSDI) application; or

(c) A DFA recipient is no longer eligible for DFA.

(D) What is the responsibility of the county agency in the disability determination process?

(1) The county agency shall ensure the applicant was provided the JFS 07302 and/or the JFS 07308 in accordance with rule 5101:1-2-01 of the Administrative Code.

(2) Upon request, the county agency shall assist the individual in receiving an eye examination or medical/psychological examination (which may include scheduling appointments) in order to obtain a current medical statement. When the cost of obtaining the examination is not covered by medicaid and/or a third-party, the county agency shall utilize administrative funds to assist the applicant in obtaining a current medical statement.

(3) The county agency shall maintain case records in accordance with rule 5101:9-9-21 of the Administrative Code.

(E) What is a CDR and when is it conducted? A CDR is the process for verifying a DFA recipient continues to meet the disability requirement in paragraph (A) of this rule.

(1) When shall the CDR be conducted?

(a) When there are more than ninety days between the CDR date and the reapplication date, the CDR shall be rescheduled and conducted ninety days prior to the reapplication date.

(b) When the CDR date is less than or equal to ninety days from the reapplication date, the CDR shall be conducted on the CDR date.

(2) What is the responsibility of the county agency in conducting a CDR? The county agency shall:

(a) Provide the DFA recipient with the JFS 07302 and/or the JFS 07308 and notify the recipient that the form(s) must be completed and received by the county agency within ninety days;

(b) Upon request, assist the recipient in accordance with paragraph (D)(2) of this rule; and

(c) Terminate DFA when a current medical statement has not been returned on or before the ninetieth day from the date it is requested, or the current medical statement does not meet the requirements described in paragraph (B)(2) of this rule. The adverse action shall be taken in accordance with Chapter 5101:6 of the Administrative Code.