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In the Matter of

D.B.

FINAL AGENCY DECISION

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D.B. (petitioner) appeals the Division of Developmental Disabilities' (Division) determination that he is ineligible to receive Division services because he is not eligible for Medicaid.

In preparing this Final Agency Decision the following items were reviewed: the petitioner's submissions; the Division's Recommended Decision; the petitioner's file with the Division; and applicable statutes and regulations.

**BACKGROUND**

D.B. was born on April 4, 1966 and became eligible for Division services in September 1995. He resides in his own condominium and, until the determination of ineligibility at issue in this case, had been receiving Division-funded services through the "Self Determination" program.<sup>1</sup> D.B.'s final budget in this program was \$38,286.00 for the year 2012. Services included were an individual assistant for 15 hours per week, a support broker to assist with creating and implementing D.B.'s service plan, and an assortment of items not directly related to a developmental disability, such as clothing, household maintenance, automobile maintenance and insurance, condominium association fees and utilities, among other things.

In January 2013 the Division adopted new eligibility regulations, N.J.A.C. 10:46, which require individuals to be Medicaid eligible in order to receive Division-funded services. This requirement reflects system reforms within the Division in which all services will be provided through a federal Medicaid waiver program.

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<sup>1</sup> Self Determination began in the late 1990s and was the Division's first program to offer services to individuals with developmental disabilities through a self-directed model. The program was closed to new members in 2003.

In February 2013, staff from the Division of Disability Services (DDS) began assisting individuals in the Self Determination program to obtain Medicaid eligibility and modify their service plans to be aligned and consistent with the Division's current self-directed services policies and procedures, rather than the older self determination model. D.B. was not Medicaid eligible.<sup>2</sup> From February through July 2013, DDS was in communication with D.B. and his mother, both by telephone and letter, to attempt to assist them with obtaining Medicaid for D.B. DDS discussed options with D.B.'s mother such as NJ FamilyCare and WorkAbility, two Medicaid programs through which D.B. could explore obtaining Medicaid eligibility. Neither D.B. nor his mother followed up on these options, and to date, D.B. remains ineligible for Medicaid.

Beginning in 2012, Division staff from the Community Care Waiver Unit had also attempted to assist D.B. in becoming Medicaid eligible, through reapplying for Medicaid through the CCW. D.B. did not follow up on these attempts and did not complete an application for the CCW.

By letter dated July 22, 2013, the Division notified D.B. that his eligibility for Division-funded services would end on September 16, 2013, because he was not eligible for Medicaid as required by regulation. D.B. appealed that decision and this administrative paper review follows.

## **DISCUSSION**

Effective January 22, 2013, individuals wishing to receive or continue to receive DDD services were required to apply, become eligible for and maintain Medicaid eligibility. N.J.A.C. 10:46-1.2 states:

The provisions of this chapter shall apply to all individuals applying to the Division for eligibility under N.J.S.A. 30:4-25.1 et seq. and 30:4-165.1 et seq. Individuals

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<sup>2</sup> D.B.'s file reflects that by letter dated December 8, 2011, the Division of Medical Assistance and Health Services, the state agency that determines Medicaid eligibility, notified him that he was not eligible for Medicaid through the Community Care Waiver because his monetary resources exceeded the applicable threshold.

under the age of 21, individuals who do not meet functional eligibility criteria, and individuals who are not Medicaid eligible, are not eligible to receive Division services, except for transitional planning as provided for in N.J.A.C. 10:46-2.1(f). (Emphasis added.)

The regulation is clear; individuals who are not Medicaid eligible are not eligible to receive Division services.

D.B. does not assert that he is Medicaid eligible. Staff from both DDS and the Division have attempted to assist D.B. to become Medicaid eligible. He did not, however, follow up on these attempts. Should D.B. obtain Medicaid eligibility in the future and wish to receive Division-funded services, he may contact his local Community Services Office. Information may be found on the Division's website at [www.state.nj.us/humanservices/ddd/services/apply](http://www.state.nj.us/humanservices/ddd/services/apply).

#### CONCLUSION

For the foregoing reasons, I find that the Division's determination that D.B. is not eligible for DDD services was proper.

This is my Final Decision.

Dated: 10/16/14

  
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Elizabeth M. Shea  
Assistant Commissioner  
Division of Developmental Disabilities