

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>FRANKLIN</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>FRANKLIN CDHS</b>	Initial Hearing Date <b>11/16/1999</b>	Rescheduled Postponed to <b>01/20/2000</b>	Rescheduled Postponed to <b>01/12/2000</b>	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Marsha LaFleur, Debra Vecchiarelli, Franklin CDHS; MichaeWeidenbein, ODHS</b>

Date Notice Mailed <b>12/30/1899</b>	Date Received by Local Agency <b>10/26/1999</b>	Date Received by ODHS <b>10/27/1999</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>01/17/2000</b>
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Appeal Number(s)/Program(s) <b>9926563/MED</b>
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### Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be available for examination at the local agency during normal office hours.

If you believe the state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. The department will respond to your request quickly, so any information, arguments, or documents you want considered must be sent with your request. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. ***(If the 15th day falls on a weekend or holiday this deadline is extended to the next work day.)***

During the 15th day administrative appeal period, you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services, but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

### ISSUE:

Whether the Franklin County Department of Human Services (CDHS) acted on the 1/99 application for Home & Community Based Services (HCBS) Waiver with reasonable promptness and/or acted erroneously (Appeal 9926563) which prevented the appellant from being placed in a waiver slot in 1999.

### FINDINGS OF FACT:

RKC

Appeal(s) <b>SUSTAINED 9926563</b>	Date Issue <b>01/24/2000</b>	Compliance <b>9926563</b>
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**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)

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Preliminary Facts:

1. Ohio Department of Human Services (ODHS) Bureau of State Hearings received the hearing request on October 26, 1999. This case has been before a hearing officer on two occasions. Each time, the hearing was rescheduled due to confusion about which agencies should be present for the hearing. The hearing was finally heard on Thursday, January 20, 2000 at 1:30pm by telephone from the ODHS Columbus District Hearings Office. All witnesses were sworn in and testified under oath.

Undisputed Facts:

2. Household composition is four persons, including the appellant, his mother, and two siblings. The twelve year old appellant is autistic.

3. On 1/4/99, the Franklin County Department of Human Services (CDHS) received the ODHS 2399 application for Home and Community Based Services (HCBS) Waiver and an application for Healthy Start. The family applied for the Ohio Home Care Waiver Program administered by the Ohio Department of Human Services' (ODHS).

4. Franklin CDHS incorrectly assigned the HCBS waiver application to the Ohio Department of Mental Retardation & Developmental Disabilities (ODMRDD) instead of ODHS. ODHS never received the HCBS waiver application in order to determine eligibility.

5. Franklin CDHS acknowledged no notice was ever mailed to appellant's family regarding HCBS waiver eligibility.

6. On 3/17/99, ODHS mailed notices to interested parties that enrollment in its Ohio Home Care Waiver program closed due to maximum enrollment capacity had been achieved. New openings would be available July 1, 1999. On July 1st, open enrollment begin for approximately 1,500 waiver slots. By November 16, 1999, ODHS mailed similar notice of 3/17/99 closing enrollment on the Ohio Home Care Waiver program due to maximum enrollment achieved. Enrollment will resume again effective July 1, 2000.

Disputed Facts:

7. Franklin CDHS indicated the appellant's HCBS waiver application was denied three times in 1999: 7/20/99, 8/6/99, and 11/1/99. The denial notice was never sent because the incorrect

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reason code was listed in the CRISE system. The hearing officer finds that the three denials did not occur because notice was never mailed to the appellant's family.

8. Appellant' mother indicated she was never informed of Healthy Start eligibility and that she never received a Healthy Start Medicaid card. In review of the Franklin CDHS' testimony and review of the CRISE computer screen, proper notice of approval was mailed to the family the day after application, on 1/5/99. Therefore, since the approval notice did not return to the agency, the hearing officer finds that the agency mailed the notice of approval regarding Healthy Start and the family received such notice.

9. The mother states that the family did not receive a Healthy Start Medicaid card. The agency contended that Medicaid cards were mailed for 1/99 through 2/99 but the family may not have received Medicaid cards effective 3/1/99 because the family was enrolled in an HMO who sends the Medicaid card. Considering the evidence of both parties, the hearing officer finds that he family never received Medicaid cards. Franklin CDHS failed to show evidence that Medicaid cards of 1/99 and 2/99 were ever mailed to appellant.

Also, when the County was asked which months appellant was eligible for Medicaid, it did not know and began to compute eligibility at the hearing. According to County testimony, appellant was eligible for Healthy Start Medicaid 1/99 through 8/99 and 11/99. Franklin CDHS did not know the reason for the break in service for the periods 9/99, 10/99 and 12/99. Franklin CDHS advised the family to send in any invoices or past medical expenses for 1999 so that the family could have these bills paid by Medicaid. Appellant asked about reimbursement for medical services paid. The County indicated a determination would be made at an appointment scheduled for Friday, January 28, 2000 at 3:30pm.

**EXHIBITS:**

None

**CONCLUSIONS OF POLICY:**

1. **Ohio Administrative Code (OAC) sec. 5101:1-39-94** provides that the following procedures to be followed in the Home & Community Based Services (HCBS or MA-J ) waiver application process:
  - (A) The HCBS waiver application process is initiated upon receipt of the completed ODHS 2399, Home

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and Community-Based Services Waiver Referral and the ODHS 7100, Application For Income, Medical, and Food Assistance, also referred to as the 'common application form (CAF)' or the ODHS 7200, Application For Cash, Medical or Food Stamp Assistance (APPL). Applications may be submitted by individuals, the local passport administrative agencies, or the local county boards of mental retardation/developmental disabilities (MR/DD). If the ODHS 2399 is submitted without a completed ODHS 7100, the CDHS shall return the ODHS 2399 to the appropriate agency or individual for completion of the ODHS 7100.

If an individual (applicant or authorized representative) completes the ODHS 2399 at the CDHS he may also, at the same time, complete an ODHS 7200 and a face-to-face interview instead of the ODHS 7100. The date of signature on the ODHS 2399 shall remain protected as the HCBS waiver application date for those ODHS 2399s returned for the completion of the ODHS 7100. The medicaid application date is the date of receipt of the ODHS 7100 or ODHS 7200. In some instances, medicaid retroactive eligibility must be determined to cover the HCBS waiver referral protected date.

(B) The CDHS in the county in which the applicant/recipient resides shall accept and process the HCBS waiver application in accordance with the application procedures outlined in Chapter 5101:1-2 of the Administrative Code.

(C) For a new assistance group, the CDHS shall conduct the face-to-face interactive interview and preview of medicaid eligibility and HCBS waiver income/resource eligibility (special income level, resource assessment, resource eligibility standard) within five working days of receipt of the completed ODHS 2399 and ODHS 7100. For an ongoing medicaid assistance group, the CDHS shall within five working days of receipt of the ODHS 2399 and ODHS 7100 or ODHS 7200, determine if the individual is under the special income level for HCBS waiver eligibility and enter the appropriate information into CRIS-E.

(D) If the individual meets, or appears to meet, the income and resource eligibility requirements, the CDHS shall pend the medicaid HCBS waiver (MA-J) assistance group and generate CRIS-E alert 678 to the appropriate HCBS waiver agency (bureau of community services, passport administrative agency or department of MRDD). If the appropriate HCBS waiver agency is not known, the CRIS-E alert shall be sent to the bureau of community services HCBS waiver eligibility worker who will forward the information to the correct agency.

(E) Upon receipt of CRIS-E alert 678, the ODHS bureau of community services, the local passport administrative agency, or the county board of MRDD shall complete an assessment of the individual's medical needs and the HCBS enrollment determination.

(F) The ODHS 2399 shall be maintained in the assistance group's case record that is located in the CDHS.

(G) If the limiting physical factor requirement is to be met through the level of care determination that is part of the HCBS waiver assessment, the CDHS shall accept the level of care determination that the HCBS waiver assessment worker enters on CRIS-E screen AEIWV 'HCBS/Waiver Information'.

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(H) If HCBS waiver income/resource eligibility is not met, the CDHS shall deny the HCBS waiver application. The denial notice shall be sent to the applicant and/or authorized representative, if any. CRIS-E alert 657 will be generated to the HCBS worker to notify them that the HCBS waiver application has been denied.

(I) When the HCBS waiver is approved or denied, CRIS-E alert 656 will be generated to the CDHS to rerun and authorize or deny the HCBS waiver (MA-J) assistance group. Once the CDHS reruns and authorizes the approval or denial of the MA-J assistance group, CRIS-E alert 657 will be generated to the HCBS worker so the waiver individual, authorized representative, if any, and medical providers can be notified by the HCBS worker of the waiver approval. The CDHS shall provide appropriate notification of denial of HCBS waiver eligibility.

(J) The approval date for the HCBS waiver can not precede the signature date on the ODHS 2399 or the date when all financial and/or resource eligibility requirements are met, whichever is later.

(K) Reference Chapter 5101:1-14 of the Administrative Code for information on intercounty transfers and for individuals who currently reside in one county but apply for HCBS waiver services in another county.

2. **OAC sec. 5101:1-39-95** states that upon approval of HCBS waiver enrollment by ODHS, bureau of community services, the local passport administrative agency, or the local county board of MR/DD, the CDHS shall authorize the approval of medicaid (MA-J) and the HCBS waiver eligibility in accordance with this rule. The ODHS bureau of community services, local passport administrative agency or local county board of MRDD shall provide appropriate notification of the approval of HCBS waiver eligibility. The CDHS shall provide appropriate notification of the approval of medicaid, QMB, etc. Upon denial of HCBS waiver enrollment by ODHS, bureau of community services, the local passport administrative agency, or the local county board of MR/DD, the CDHS shall authorize the denial of the pending application. The CDHS shall provide appropriate notification pursuant to Chapter 5101:6-2 of the Administrative Code of denial for medicaid, QMB, etc.

3. **OAC sec. 5101:6-2-03(A)** provides that when an agency denies an application for or a requested change in public assistance or social services, the assistance group shall be provided prompt written notice of the decision. "(1) The notice shall contain a clear and understandable statement of the action the agency has taken and the reasons for it, cite the applicable regulations, explain the individual's right to and the method of obtaining a county conference and a state hearing, and contain a telephone number to call about free legal services. (2) "Notice of Denial of Your Application for Assistance," ODHS 7334, or its CRIS-E equivalent, shall be used."

4. **OAC sec. 5101:6-5-01(B)(1)** states that, "The agency shall prepare an 'Appeal Summary,' ODHS 4067, with appropriate attachments, and send it to the district hearings section within five workdays from the date the hearing request is received. A copy shall be placed in the individual's case record." Section (B)(4) further states that the "ODHS 4067, together with its attachments, shall provide a summary of all facts and documents relevant to the issue under appeal, and shall be sufficient to demonstrate the basis for the agency's action or determination."

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5. **OAC sec. 5101:6-7-01(C)** provides that the Hearing Officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODHS rules.
6. **OAC 5101:1-2-01(A)(4)** provides that administrative duties shall be performed in such a manner as to secure for every assistance group (AG) the full amount of aid to which it is legally entitled according to program regulations.

#### **Analysis**

OAC 5101:1-2-01(A)(4) provides that administrative duties shall be performed in such a manner as to secure for every assistance group (AG) the full amount of aid to which it is legally entitled according to program regulations. The facts established at the hearing showed that the Appellant's 1/4/99 application for ODHS' Ohio Home Care Waiver program, was not acted on properly or administered in a way so that the appellant could receive all legally entitled benefits. The HCBS waiver application never made it to ODHS for possible enrollment into the waiver. Instead, this application was incorrectly sent to the Ohio Department of MRDD for eligibility determination. In review of the application procedures, this HCBS waiver application was not processed in accordance with OAC Rule 5101:1-39-94.

Secondly, OAC sec. 5101:6-2-03(A) provides that when an agency denies an application for or a requested change in public assistance or social services, the assistance group shall be provided prompt written notice of the decision. In this case, due process was not afforded to appellant's family as they never received a notice of denial. Although the agency contends the application was denied three times in 1999, the family was never notified of this denial pursuant to the aforementioned rule.

Finally, the appellant was approved for Healthy Start Medicaid by the same application of 1/4/99. Healthy Start Medicaid was approved and proper notice was mailed to and received by the family. However, the agency did not show evidence that the family ever received a Medicaid card. The appellant's mother contended that she never received a Medicaid card for appellant. The agency did not disagree but added that the appellant was enrolled in an HMO effective 3/1/99 and the HMO (Total Health Care) was responsible for mailing the Medicaid card to the family. Again, OAC 5101:1-2-01(A)(4) applies as the mother had requested assistance from the agency and proper support was not provided in order to secure the full amount of aid to which appellant is legally entitled.

Moreover, since the application was not acted upon with reasonable promptness and acted upon erroneously by sending it to the incorrect state agency for an eligibility determination, the hearing officer finds that the agency's actions are not appropriate.

#### **HEARING OFFICER'S RECOMMENDATIONS:**

It is recommended that appeal 9926563 be Sustained. The Franklin CDHS is instructed to reopen the 1/4/99 HCBS application and send to the ODHS Bureau of Community and Long Term Care Services

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for proper eligibility determination preserving the 1/4/99 application date. Although no waiver slots are open until 7/1/2000, the ODHS shall review eligibility and send proper notice of the outcome including all appeal rights. A copy of the written redetermination is to be attached to the ODHS 4068, State Hearing Compliance form.

Franklin CDHS is also instructed to redetermine Healthy Start Medicaid for the entire year 1999. The agency shall collect from the appellant's family all possible information for either Medicaid payment or (family) reimbursement for Medicaid services paid for on behalf of appellant. Appellant reserves all rights to appeal any future actions as outlined by this hearing decision.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

The Hearing Officer's recommendations are adopted. Appeal 9926563 is Sustained.

Compliance is Required

*OAC Rule 5101:6-7-03(B)(1)(a) requires compliance within fifteen calendar days from the date the decision is issued, but in no event later than ninety days from the date of the hearing request for those decisions involving public assistance, social services or child support services.*

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Date Issued: 01/24/2000