

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County HIGHLAND	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing HIGHLAND CDHS	Initial Hearing Date 11/13/2002	Rescheduled Postponed to 01/08/2003	Rescheduled Postponed to 01/08/2003	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation S.Boykins,ODJFS,BCLTCS;C.Lopez,ODJFS,Carestar;K.Ma

Date Notice Mailed 10/18/2002	Date Received by Local Agency	Date Received by ODHS 10/28/2002	Date Appeal Summary Received 01/08/2003	Date Scheduling Notice Mailed 12/26/2002
Appeal Number(s)/Program(s) 1091849/MED, 1091851/FS				

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 maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the COLUMBUS District hearing section at 1-800-686-1568.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. 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 15-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 SECTION

1. By notice of 10-18-02, the Highland County Department of Job Family Services (CDJFS) denied the appellant's application for Ohio Home Care Waiver (OHCW). The denial is based on the Ohio Department of Job Family Services (ODJFS), Bureau of Community Long Term Care Services (BCLTCS) assessment and determination via Carestar that the appellant does not have an intermediate level of care (ILOC) or skilled level of care (SLOC). On 10-28-02, the appellant requested a state hearing. After thoroughly reviewing and considering all testimony and evidence presented at the hearing, this Hearing Officer finds that the determination that the appellant does not have an ILOC or SLOC is appropriate. Thus, this Hearing Officer concludes that the appellant is ineligible for OHCW and that the 10-18-02 denial of the OHCW application is supported and is correct. Therefore, this Hearing Officer recommended that the appeal (1092849) be **OVERRULED**.

LJH

Appeal(s) OVERRULED 1091849 WITHDRAWAL 1091851	Date Issued 01/10/2003	Compliance
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

Appeal Number(s) 1091849, 1091851

2. The appellant signed a written withdrawal on 1-8-03 of the Food Stamp (FS) issue. This Hearing Officer finds that the appeal is withdrawn. Thus, this Hearing Officer recommended that the appeal (number 1091851) be WITHDRAWN.

PROCEDURAL MATTERS

1. The Ohio Department of Jobs Family Services (ODJFS), Bureau of State Hearings (BSH) received the hearing request on 10-28-02 and identified 10-28-02 as the official hearing request date. The following appeal numbers were assigned to the hearing request: 1091849 (MED), 1091851 (FS).
2. The Columbus Hearing Section (CHS) received the hearing request. And, the CHS generated a State Hearing Scheduling Notice on 11-1-02. The state hearing was originally scheduled for 11-13-02 with hearing officer Mautz presiding. However, the hearing was rescheduled as BCLTCS did not receive notice of the hearing.
3. The CHS generated a State Hearing Scheduling Notice on 12-26-02. And, the state hearing was rescheduled for and heard on 1-8-03 with hearing officer Hartley presiding.
4. The 1-8-03 state hearing was conducted by way of telephone with the appellant, the BCLTCS representatives, and the CDJFS representatives. All parties were sworn in by this Hearing Officer. A BCLTCS appeal summary was received and was entered into the hearing record in its entirety.
5. The appellant signed a written withdrawal on 1-8-03 of the FS issue.

FINDINGS OF FACT

Undisputed Facts

1. The appellant is an adult female, 56 years of age (date of birth 7-30-1946).
2. The appellant receives Medicaid through the Highland CDJFS.
3. On or about 5-14-02, the appellant filed for the OHCW program through the Highland CDJFS.
4. A level of care (LOC) determination assessment was completed by the BCLTCS home services

Appeal Number(s) 1091849, 1091851

facilitation agency (Carestar) on 5-17-02 for the OHCW program.

5. The appellant is totally independent with all activities of daily living which include: bathing, dressing, toileting, eating, mobility, and grooming.

6. The appellant does not need or have orders for at least one skilled nursing service (7 days/wk) or skilled rehabilitation (5 days/wk) or have a chronic, unstable medical condition that requires the skills of a registered nurse. Thus, the BCLTCS home services facilitation agency (Carestar) determined that the appellant does not meet the SLOC.

7. The appellant does not require hands on assistance with completion of at least two of the following activities of daily living (ADL) which include: bathing, dressing, toileting, eating, mobility, or grooming; nor needs assistance with one ADL and medications; nor does not require 24 hours supervision to prevent harm due to a cognitive impairment. Thus, the BCLTCS home services facilitation agency (Carestar) determined that the appellant does not meet the ILOC.

8. The appellant's own personal physician (doctor) provided written confirmation, dated 5-21-02, that the appellant does not have a level of care.

9. The BCLTCS determined via the Carestar assessment and recommendation that the appellant does not meet the criteria for an ILOC or SLOC and, therefore, does not meet the level of care requirement for enrollment on the OHCW.

10. Thus, BCLTCS denied enrollment on the OHCW program and notified the Highland CDJFS of the denial.

11. On 10-18-02, the Highland CDJFS subsequently mailed written notice of the denial of the OHCW application.

12. On 10-28-02, the appellant requested a state hearing.

Disputed Facts

1. None.

CONCLUSIONS OF POLICY

Appeal Number(s) 1091849, 1091851

Policy

1. Ohio Administrative Code (OAC) section 5101:3-12-04 outlines the criteria for consumer eligibility for Ohio Home Care Waiver benefits. And, to be enrolled on the OHCW, an individual must have an ILOC or SLOC.
2. OAC section 5101:3-3-05 outlines the criteria for a skilled level of care (SLOC).
3. OAC section 5101:3-3-06 outlines the criteria for an intermediate level of care (ILOC).

Analysis

1. The appellant argued that she needs more help as she can use only one hand. The CDJFS representative pointed out that, due to appellant's stroke, the appellant is receiving five hours per week through a home care agency via the Medicaid program through Highland CDJFS.
2. The BCLTCS, Carestar representative agreed that they are aware of the services from the home care agency and argued that these services are environmental management, e.g., laundry, home tasks, cleaning. The BCLTCS, Carestar representative continued to argue that the environmental management is not activities of daily living (ADL): bathing, dressing, toileting, eating, mobility, or grooming. And, she argued that the appellant is totally independent with all ADL which has been substantiated in writing by the appellant's personal physician/doctor. Therefore, the appellant does not have an ILOC or SLOC and does not meet LOC criteria for enrollment on the OHCW.
3. The appellant did not offer any dispute or evidence with regard to her being totally independent with all ADL.
4. Absence of any definitive evidence to the contrary, this Hearing Officer finds that the appellant is totally independent with all ADL.
5. The facts presented at the hearing reveal that the appellant does not have an ILOC or SLOC. This fact is further supported, as there was no dispute by the appellant and there was written confirmation from the appellant's own personal physician of no LOC. Further, BCLTCS/Carestar completed an assessment and determination for the OHCW program which resulted with no ILOC or SLOC and; therefore, ineligibility for the OHCW program. Thus, this Hearing Officer concludes that the BCLTCS determination of ineligibility for the OHCW program and the 10-18-02 subsequent denial of the OHCW application by the Highland CDJFS

Appeal Number(s) 1091849, 1091851

are supported and are correct.

HEARING OFFICER'S RECOMMENDATIONS

1. Based on the record before me, I find the appeal number 1091849 should be OVERRULED.
2. Based on the record before me, I find the appeal number 1091851 should be WITHDRAWN.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be support by the evidence, the recommendations above are adopted. Appeal number 1091849 is OVERRULED. Appeal number 1091851 is WITHDRAWN.

APPENDIX

Agency Exhibits

- A. Appeal summary (1 page)
- B. Level of care summary with appellant's physician signature agreeing with no level of care (2 pages)
- C. Data collection check list (12 pages)

Date Issued: 01/10/2003