

## 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>12/22/2003</b>	Rescheduled Postponed to <b>01/20/2004</b>	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Vicki French-Regional Supervisor CareStar</b>

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS <b>10/07/2003</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>01/09/2004</b>
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Appeal Number(s)/Program(s) <b>1141921/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 maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the Bureau of State Hearings at 1-866-ODJFS-4-U (1-866-635-3748); and choose option number 1 from the main menu.

**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:

The Ohio Department of Job and Family Services through the Franklin County Department of Job and Family Services (Agency) proposed to reduce the Appellant's Medicaid benefits. The Agency based the proposal on an alleged duplication of services. The Appellant challenged the Agency's proposal by requesting a state hearing. After reviewing all of the evidence presented at the hearing and the applicable policy I find the Agency did sustain its burden by a preponderance of the evidence that its actions were in accordance with ODJFS rules. Therefore I recommend the appeal number 1141921 be **OVERRULED**.

### PROCEDURE MATTERS:

1. The hearing was requested on 10/7/2003.
2. The state hearing was originally scheduled for 12/22/2003, but the Appellant requested a reschedule due to illness.
3. The hearing was rescheduled and occurred on 1/20/2004.

REP

Appeal(s) <b>OVERRULED 1141921</b>	Date Issued <b>01/23/2004</b>	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.)*

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4. The Bureau office rescheduled the hearing to occur after the ninety day time limit. This was done in an effort to coordinate the third party schedule.
5. Participating in the hearing and testifying under oath were the Agency and the Appellant.
6. The Agency did prepare an Appeal Summary

### **FINDINGS OF FACT:**

#### Undisputed Facts:

1. The Appellant is a current recipient of Medicaid benefits under the Ohio home Care waiver Program.
2. The Appellant is a 51 year old female.
3. The Appellant has a diagnosis of Multiple Sclerosis, Pernicious Anemia, and Cervical Laminectomy.
4. The Appellant has a functional deficit in her right arm.
5. The Appellant is wheelchair bound for mobility purposes.
6. The Appellant receives home health care services.

#### Disputed Facts:

1. The Agency argues the Appellant receives home health care services, which include homemaker services and therefore to order meals on wheels is a duplication of services.
2. The Appellant argues she is unable to afford to provide herself with three meals per day and sometimes it is necessary for her to eat when the aids are not present.
3. I find the Appellant does receive home health care services which does include meal preparation.

### **CONCLUSIONS OF POLICY:**

#### Policy

Ohio Administrative Code rule 5101:6-5-01(B) An appeal summary shall be completed by the agency proposing the action about which the individual requested the state hearing.

(1) The agency shall prepare an "Appeal Summary," ODHS 4067, with appropriate attachments, and send it to the assigned hearings section within five workdays from the date the hearing request is received. A copy shall be placed in the individual's case record.

Ohio Administrative Code sec. 5101: 6-7-01 (C) (1) (c) (2000) requires county departments of job and family services to show at state hearings by the preponderance of the evidence that its actions or inactions were in accordance with Ohio Department of Job and Family Services rules.

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**5101:3-12-04 Consumer eligibility for Ohio home care benefits.**

Before a consumer can receive home care services through the Ohio home care program, the consumer must be enrolled in one of the ODJFS-administered home care benefit packages, or be enrolled in one of the HCBS waiver programs administered by the Ohio department of aging or the Ohio department of mental retardation and developmental disabilities (ODMR/DD). Consumers are not eligible for home care benefits if they are receiving hospice services through Medicare or Medicaid, or services through the program of all inclusive care for the elderly (PACE) reimbursed by medicaid.

(C) To be eligible for services under an ODJFS-administered waiver benefit package, the following criteria must be met:

(1) At the time of enrollment on the Ohio home care waiver:

(a) The consumer regardless of age, must have a skilled level of care in accordance with rule 5101:3-3-05 of the Administrative Code, have a chronic, unstable medical condition that requires the skills of a registered nurse to detect and evaluate the consumer's need for possible treatment or for instituting nursing procedures, and in the absence of the ODJFS-administered HCBS waiver, would require long term hospitalization or NF placement;  
or

(b) The consumer, if under the age of sixty, must have an intermediate level of care in accordance with rule 5101:3-3-06 of the Administrative Code, and in the absence of an ODJFS-administered HCBS waiver would require NF placement;.

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(2) At the time of enrollment on the transitions waiver:

(a) The consumer must be enrolled on the Ohio home care waiver; and

(b) The consumer must have an ICF-MR level of care in accordance with rule 5101:3-3-07 of the Administrative Code; and

(c) The consumer must need habilitation services.

(3) Medicaid eligibility has been determined by a CDJFS in accordance with rules 5101:1-39-94 and 5101:1-39-95 of the Administrative Code.

(4) The needed service(s) is not readily available through another source, with the sole exception of the Ohio rehabilitation services commission's personal care program.

**5101:3-12-06(B) Daily living service**

(1) "Daily living services" are services which assist consumers in carrying out activities of daily living and instrumental activities of daily living that they would typically self-perform if functional ability were present. Such services are synonymous with home health aide services when the services listed under paragraph (B)(4) of this rule are performed by a home health aide who has met the personnel requirements as set forth in 42 CFR 484, and who is employed by a medicare- certified home health agency enrolled under the Ohio medicaid program.

(2) A "daily living visit" shall be defined as a face-to-face encounter for the purpose of providing daily living services as defined in paragraph (B)(1) of the rule.

(3) A "group daily living visit" shall be defined as a face-to-face encounter for the purpose of providing daily living services to two or three consumers at the same residential address or community setting on the same date,

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regardless of the payer source of each consumer. The ratio of consumers per daily living service provider shall be no greater than three-to-one.

(4) Reimbursable daily living visits are limited to intermittent or continuous care visits to provide the following services:

(a) Personal care services that are needed to facilitate treatment or to prevent deterioration of the consumer's health unless the skills of a licensed nurse are required due to the consumer's condition. Such services include, and are not limited to: bathing; dressing; grooming; caring for hair, nail and oral hygiene; shaving; deodorant application; skin care with lotions and /or powders; foot care; ear care; feeding; assistance with elimination (including enemas, routine catheter care, and colostomy care); assistance with ambulation; changing position in bed and assistance with transfers;

(b) Assistance with activities that are directly supportive of skilled therapy services, but do not require the skills of a therapist or therapy assistant to be safely and effectively performed, (i.e., routine maintenance exercise and repetitive practice of functional communicating skills to support speech-language pathology services);

(c) Routine care of prosthetic and orthodox devices (i.e., care not considered the responsibility of the supplier of prosthetic and orthodox devices);

(d) Performance of general household activities that are essential to the consumer's health and safety, (i.e., preparation and clean-up of meals, laundry, bed making, dusting, vacuuming, errands and other routine household chores;

(e) Short term relief for the primary caregivers of consumers enrolled on the ODJFS-administered waiver benefit; and

(f) Other services that are traditionally nursing services that may be delegated by nurses, in accordance with Chapter 4723. of the Revised Code, as long as the service provider is trained and qualified under Ohio law to perform the delegated service.

(5) Under the core and core plus benefits, homemaker services can only be provided if the homemaking services are incidental to daily living services. Under the ODJFS-administered waiver benefit, homemaking services may be provided as a separate service.

### Analysis

In the instant case the Appellant is a current recipient of Medicaid benefits through the Ohio Home Care Waiver. The Appellant receives 8 hours of daily care from a Home health care aide. The aide provides daily living services to the Appellant. In accordance with the definition of the covered services under the Waiver program in the category of Daily Living Services is food preparation. The services rendered by the health care aide does include the preparation of food. The OAC Rule 5101:3-12-04(C)(4) states the needed service(s) is not readily available through another source, with the sole exception of the Ohio rehabilitation services commission's personal care program. This provision is to eliminate duplication of services. In the instant case the Appellant receives daily living services through the Waiver program. The use of "Meals on

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Wheels" would constitute a duplication of services. Therefore, this Hearing Officer judges the actions of the Agency in denying the Appellant's use of Meals on Wheels as a duplication of services to be appropriate.

**HEARING OFFICER'S RECOMMENDATION:**

Based upon the applicable policy and record before me, I recommend that appeal number 1141921 is OVERRULED.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Since I find that the State Hearing Officer's recommendations are supported by policy and the evidence, I adopt his recommendation. Consequently, the appeal number 1141921 is hereby OVERRULED.

**APPENDIX:**

Agency Exhibits: [Appeal Summary]

Appellant Exhibits: [None]

Date Issued: 01/23/2004