

IN THE OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS

ADMINISTRATIVE APPEAL DIVISION

IN RE APPEAL OF:

DOCKET NO. 2005-AA-0033
APPEAL No(s). 1190453 / MED
AG No.
HEARING REQUEST DATE: 09/02/2004
HEARING DECISION DATE: 12/30/2004
APPEAL REQUEST DATE: 01/10/2005
APPEAL Decision Due Date: 01/25/2005
Hamilton CDJFS

Administrative Appeal Decision

The Appellant requests an administrative appeal of the state hearing decision issued on December 30, 2004. The state hearing decision overruled the Appellant's appeal, finding that the Bureau of Home and Community Services, through its contractor, Carestar, appropriately denied the Appellant's request for additional hours of daily living services. The Appellant's administrative appeal request states that her former husband is no longer able to provide care at night and she will be unable to turn or get out of bed in case of an emergency.

The Appellant is enrolled in the Ohio Home Care Waiver and was receiving six hours of daily living services through a home health aide. Carestar, the home service facilitator, conducted home visits with the Appellant and recommended increasing her hours, adding two additional hours per day, seven days per week. The Appellant objected and states she needs additional hours of service beyond eight hours per day. The Appellant's physician agreed to the Carestar proposal on 10/13/04, see exhibit D. The state hearing decision found that Carestar's proposal to increase the Appellant's hours to eight hours per day, seven days per week was appropriate. Additional hours of daily living services were not found to be necessary.

Daily living services are defined in Ohio Admin. Code 5101:3-12-06 (B) as "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." In order for services under the Ohio Home Care waiver to be covered they must meet the criteria set forth in Ohio Admin. Code 5101:3-12-02.

(1) the service must be medically necessary or the consumer's functional abilities must

- justify the need for services;
- (2) the service must be provided to a consumer in the consumer's place of residence or any other noninstitutional setting in the community;
 - (3) the service must be ordered by the consumer's treating physician in accordance with the plan of care and the all services plan, if applicable;
 - (4) the service must be provided by individuals acting within their scope of practice; and
 - (5) the service must be provided in accordance with the specific requirements set forth in rules 5101:3-12-06 and 5101:3-12-07 of the Administrative Code.


Carestar determined that eight hours of daily living services was sufficient to meet the Appellant's needs. Carestar indicates in their 10/12/04 letter to the Appellant's physician that the Appellant's needs are intermittent and the eight hours could be divided into short intervals of service throughout the day, rather than in one eight hour shift. Carestar determined that with the eight hours per day the Appellant's health and safety would not be placed in jeopardy. The Appellant's doctor signed off on the eight hour plan of care on 10/13/04.

The Appellant presented statements from herself, her ex-husband and her doctor. The statements from the doctor dated 08/27/04 and 12/22/04 offer no real evidence as to the medical necessity of additional hours of daily living services. The letters from the Appellant and her ex-husband indicate that the Appellant has many needs for assistance with all her activities of daily living (mobility, grooming, transferring, toileting, etc) and her instrumental activities of daily living (shopping, laundry, cooking, etc.). The Appellant was requesting an additional nine hours and forty-five minutes per day of daily living services. (See, exhibit 3)

Having reviewed the state hearing record, it appears that Carestar's contention that eight hours per day of daily living services is sufficient to meet the Appellant's needs is correct. The home health aide notes, exhibit B of the state hearing record, indicate that while the Appellant has many needs, they are not of a continuous nature requiring the presence of another person on a full-time basis. Carestar's suggestion that the Appellant's needs might be better met by using the daily hours in shorter, more frequent intervals appears to make sense and their recommendation of eight hours of daily living services per day, seven days per week seems appropriate.

Decision

Having, reviewed the state hearing decision and record, we find the decision contains no error affecting the outcome of the appeal. Accordingly, we hereby ORDER that the decision be AFFIRMED.

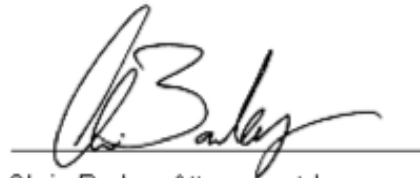


Margaret Adams
Administrative Appeal Officer

CONCUR:



Robert J. Frankart
Administrative Appeal Officer



Chris Barley, Attorney-at-Law
Chief Administrative Hearing Officer

DATE OF ISSUANCE January 25, 2005

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Hamilton County Department of Job and Family Services
Hearings Supervisor
Bureau of State Hearings
MED : Ida Pritchett/Terri Dickerson
Appellant