

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County HAMILTON	District Hearings Section CINCINNATI	Assistance Group Name		Assistance Group Number
Place of Hearing HAMILTON CDJFS	Initial Hearing Date 11/16/2004	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation H. Saxe, ODMRDD; A. Tuell, M. Anderson, B. Miller, HCMRDD; D. Ward, S. O'Toole, HCJFS

Date Notice Mailed 10/01/2004	Date Received by Local Agency	Date Received by ODHS 10/08/2004	Date Appeal Summary Received	Date Scheduling Notice Mailed 10/20/2004
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Appeal Number(s)/Program(s) 1195385/MED

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

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 state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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:

Issue #1 - 1195385 (MAJ):

The Individual Options waiver provides supported living and medical services to individuals with a MRDD diagnosis to maintain their health and safety. On 8-18-04, the Hamilton County Board of Mental Retardation and Developmental Disabilities (MRDD) denied the Appellant's request to increase his supported living hours from 40 per week to 60. The Appellant's mother contended that he needs extra hours to work on his social skills, especially as he enters his preadolescent years.

The hearing decision affirms the MRDD denial. There was no evidence that the increase is needed for the Appellant's health and safety. The evidence from Appellant's school established that his behavior is better than last school year.

TMD

Appeal(s) OVERRULED 1195385	Date Issued 01/05/2005	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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PROCEDURAL MATTERS:

On 6-8-04 and 8-18-04, MRDD mailed denial notices. On 10-8-04, the Bureau of State Hearings received the Appellant's written request for a state hearing. The hearing was scheduled for 11-16-04, and conducted on that date. The Appellant's mother, the Medical Coordinator from Appellant's nursing service, three Hamilton County MRDD representatives, and two Hamilton County Job and Family services representatives were present; an Ohio Department of MRDD representative participated by conference call. All participants were sworn in by the hearing officer.

At the mother's request, the hearing record was left open to allow her submit additional evidence. The notes and a statement from the mother were received on 11-19-04 and marked as exhibit 1.

FINDINGS OF FACT:

1. The Appellant, age 12, is disabled due to pervasive developmental disorder, mental retardation and asthma.
2. The Appellant attends Frederick Breyer School full-time, a school operated by the County Board of MRDD.
3. The Appellant receives 40 hours per week of supported living services at home through the Individual Options waiver program. The 40 hours per week is scheduled at the discretion of the mother.
4. On or about 5-26-04, the Appellant's mother requested an increase in hours from 40 to 60 per week. The mother stated that the Appellant needs more hours to work with the Appellant on social skills, especially in public settings.
5. On 6-8-04, MRDD sent the mother a letter denying the request for increased hours. The letter did not explain the right to a state hearing. (exhibit D)
6. On 8-18-04, MRDD sent a certified letter to the mother denying the request for increased hours for services. The letter states that a denial notice with hearing rights was attached, but the notice was not available as evidence for the hearing. (exhibit C)
7. In August 2004, the Appellant received 121 hours of services; in September 2004 the Appellant received 48 hours of services (exhibit F).

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CONCLUSIONS OF POLICY:

Policy

1. To be eligible for individual options waiver, an "individual's health and welfare needs, met by formal supports, informal supports and home and community-based services, must be assured," per Ohio Admin. Code § 5123:1-2-04(B)(4) (2004). An individual who is eligible for the individual options waiver must meet the requirements set forth in any other rule governing a specific individual option waiver service to be eligible for that service, §(C).
2. When an agency denies a requested change in public assistance, they must send a notice that includes instructions for requesting a state hearing and the telephone number to call for free legal services, Ohio Admin. Code § 5101:6-2-03 (B)(2) (2003).
3. The hearing officer's findings of fact must be based exclusively on the evidence introduced at the hearing, per Ohio Admin. Code § 5101:6-7-01(C)(1) (2003). The rule further states that the Agency is responsible for showing, by a preponderance of the evidence, that its action or inaction was in accordance with department rules § (C)(1)(c).

Analysis

The testimony for MRDD was provided by two of the Hamilton County MRDD representatives, the Appellant's Service Facilitator and the Supervisor. The Supervisor emphasized that the mother is the primary caregiver. The Service Coordinator explained that the Appellant's health and safety are the primary concerns in whether to extend hours, per Ohio Admin. Code § 5123:1-2-04(F)(2)(b). They also looked at previous billing and determined that the family had not used all possible hours in August and September 2004. The Service Coordinator also explained that the information from Appellant's school indicated that there was a decrease in Appellant's behavior incidents.

The mother contended that the Appellant's behavior is appropriate at home; his problem is behavior outside of the home. That is why he needs more hours to take excursions outside of the home. The mother stressed that with the Appellant entering his preadolescent years, it's even more important that the Appellant get increased hours to ensure that his behavior will be appropriate when he is out in public. She explained that the Appellant looks normal, but has significant developmental conditions and he is nonverbal. She also stressed that this is not about a lack of desire to care for her son. The Appellant deserves the opportunity to work on social skills, which more hours would provide.

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The mother submitted notes from a team meeting about the plan for the Appellant at school held on 9-8-04. She included a statement emphasizing that increasing the Appellant's services might cost more now, but would likely pay off in the future due to increase independence and decrease in potential harm that might come to Appellant as a result of inappropriate social interactions (exhibit 1).

The Medical Coordinator from the Appellant's home aide service provided testimony at the hearing. He testified that mostly they provide the Appellant with assistance with bathing and personal hygiene. They take the Appellant out sometimes. The Appellant tries to grab people and is not always appropriate with individuals that they encounter.

The rule cited by MRDD at the hearing was rescinded, effective 6-21-04. The current relevant rule also emphasizes that the purpose of the individual options waiver is to provide services for the health and safety of the covered individual. The county MRDD determines the level of services needed to maintain health and safety. Here, the MRDD determined that the Appellant's current level of 40 hours was sufficient. There is no evidence to contradict that finding. Although the meeting notes submitted by the mother (exhibit 1), states that his behavior may be up, the intensity is down. There have been recent incidents in the classroom, but the MRDD evidence showed that behavior incidents are down from last year. On 8-31-04, the classroom teacher told MRDD that the Appellant has been doing much better when compared with last year (exhibit A). The increase in services is desired for extra time to take the Appellant on outings. The evidence indicates that the Appellant is not using the full 40 hours per week.

After consideration of testimony, evidence, and applicable rules, the hearing decision affirms the MRDD denial.

It's noted that the first letter mailed out by MRDD did not have adequate notice of appeal rights. The MRDD representative did not have a copy of the official notice with appeal rights mailed to the Appellant. Only a copy of the cover letter (exhibit C).

HEARING OFFICER RECOMMENDATIONS:

Issue #1 - 1195385 (MAJ):

Appeal number 1195385 should be OVERRULED. The denial is affirmed.

FINAL ADMINISTRATIVE DECISION AND ORDER:

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Issue #1 - 1195385 (MAJ):

Finding the hearing officer's decision to be supported by the evidence, the recommendation shown above is adopted. The appeal is **OVERRULED**.

Exhibits:

Agency:

- A - Case management notes (6 pages)
- B - Copy of certified mail receipt
- C - Letter to mother, dated 8-18-04
- D - Letter to mother, dated 6-8-04
- E - My Plan for Appellant (unsigned by mother), dated 8-4-04 (14 pages)
- F - Utilization of services (2 pages)
- G - Ohio Admin. Code § 5123:1-2-04 (2003)
- H - Graph of Appellant's behavior data for September and October 2004
- I - Chart of Appellant's behaviors for October (2 pages)
- J - Yearly behavior summary sheet for September and October 2004
- K - Psychology reevaluation, dated 5-24-04 (4 pages)
- L - MRDD medical evaluation, dated 1-19-03 (3 pages)
- M - Scheduling notice

Appellant:

- 1 - Notes from special team meeting on 9-8-04 and mother's comments (4 pages)

Date Issued: 01/05/2005