

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1250280	MED	OVERRULED
No Compliance Required		
Decision Date:	01/19/2006	
Request Date:	10/03/2005	
Hearing Officer:	MARY CAYE KILBANE	

State Hearing Decision

ISSUE:

Appeal # 1250280:

The Ohio Home Care Program (OHC), which is managed by Care Star, is contracted to provide care and coordination to Appellants enrolled in the Ohio Home Care Waiver program. Care Star proposed the termination of the home delivered meal program because a component of the daily living services received by Appellant is the preparation of meals. The receipt of home delivered meals is considered a duplication of services. Is the proposed termination correct? The proposed termination is correct because the home delivered meals are a duplication of services and not the lowest cost alternative. The appeal is OVERRULED.

PROCEDURAL MATTERS:

Notice of adverse action was issued 07/11/05. The state hearing request was received in the Bureau of State Hearings (BSH) 10/03/05 and scheduled for 11/23/05. The state hearing was rescheduled, per Appellant request, as a home telephone hearing and heard 01/18/06. The state hearing scheduling notice was issued to all parties 01/05/06. Carol Schott was the representative for Care Star and Appellant represented herself at the appeal. The Appeal Summary was faxed to the Cleveland District Office and received 01/18/06. The state hearing was heard after the ninetieth day due to a requested reschedule. The home delivered meals remain intact until the hearing decision is rendered.

FINDINGS OF FACT:

1. Appellant is a fifty-four year old individual diagnosed with CVA and congestive heart failure.
2. Appellant is the only member of the Medicaid assistance group.
3. Appellant requires hands on assistance with mobility, transfers, bathing, dressing, and meal preparation and requires assistance in toileting.
4. The current all services plan has daily living services from 8:00 a.m. until 1:00 p.m. and 6:00 p.m. until 10:00 p.m. seven days per week, and home delivered meals for lunch and dinner five days per week.
5. Pursuant to the annual review performed on 06/22/05, Care Star proposed the termination of home delivered meals because a component of the daily living service is meal preparation.

CONCLUSIONS OF POLICY:

Policy

1. Medical necessity is a fundamental concept underlying the Medicaid program. Physicians, dentists, and limited practitioners render, authorize, or prescribe medical services within the scope of their licensure and based on their professional judgment regarding services needed by an individual. Medically necessary services are services which are necessary for the diagnosis or treatment of disease, illness or injury and without which the patient can be expected to suffer prolonged, increase or new morbidity, impairment of function, dysfunction of a body organ or part, or significant pain and discomfort. A medically necessary service must meet generally accepted standards of medical practice; be appropriate to the illness or injury for which it is performed as to type of service and expected outcome; be appropriate to the intensity of service and level of setting; provide unique, essential, and appropriate information when used for diagnostic purposes; be the lowest cost alternative that effectively addresses and treats the medical problem; and meet general principles regarding reimbursement for Medicaid covered services.

Ohio Admin. Code § 5101:3-1-01 (A) (Anderson's 2002)

2. "Daily living services" are services that 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. Reimbursable daily living visits, in part, are limited to intermittent or continuous care visits to 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; and the performance of general household activities that are essential to the consumer's health and safety (i.e., preparation and clean-up of meals). Ohio Admin. Code § 5101:3-12-06 (B) (1) (4) (a) (d) (2005)

3. The designee is responsible for monitoring and managing utilization of home care services for consumers eligible for core-plus benefits and consumers eligible for ODHS-administered waiver benefits. The designee will be responsible for determining the appropriate amount, type, scope and duration of services, up to the individual cost cap, based on the consumer's condition and living arrangement. Ohio Admin. Code § 5101:3-12-11 (E) (1) (2) (1998)

Analysis

Appellant has a nursing home level of care and is receiving Ohio Home Care services as an alternative to nursing home placement. It is Care Star's determination the home health aides are in the home eight hours per day and should be preparing three meals per day for Appellant. The aides have the time to provide all of the required daily living services in addition to preparing three meals per day. The purpose of meal provision through Ohio Home Care is to provide independent activities of daily living assistance with meal preparation and not to provide food. The aide is able to prepare meals to be left for Appellant so that she may eat between the hours of 1:00 p.m. and 6:00 p.m. if she feels the need. The home delivered meals are a duplication of services and the termination of the program would assume a cost savings of \$315 per month.

Appellant disagrees with the proposed termination of home delivered meals because she is unable to prepare her own meals. Appellant does not have use of her left side and is in a wheelchair. However, Appellant indicates she is able to remove frozen meals from the freezer and place in the microwave for warming. Appellant usually uses frozen meals and the microwave on weekends because the home delivered meals are delivered five days per week.

STATE HEARING DECISION CONTINUATION

Appellant agreed the aide could prepare the meals and she would be able to warm the meals in the microwave. Appellant inquired whether a reduction in the service hours would allow her to retain the home delivered meals. Care Star replied a reduction in hours was not conducive with Appellant's required physical and medical needs.

In order to be eligible for Ohio Home Care Services, the needed service must not be readily available through another source and the needed services must be the lowest cost alternative effectively addresses the medical problem. The daily living services are designed to assist Appellants in carrying out acts of daily living and instrumental acts of daily living, which includes meal preparation and the subsequent clean-up. Based on the evidence and testimony provided at the appeal, the Hearing Officer finds the home delivered meals are a duplication of services. The termination of the home delivered meals would not adversely affect the health and safety of Appellant and the proposed termination is correct.

HEARING OFFICER'S RECOMMENDATIONS:

Appeal # 1250280 - The appeal is OVERRULED. The proposed termination of home delivered meals is affirmed.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and the appeals is OVERRULED



Donna James Vargo, Hearing Authority

January 19, 2006

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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 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 Bureau of State Hearings 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.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

STATE HEARING DECISION CONTINUATION

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

APPELLANT EXHIBITS:

Exhibit 1: State Hearing request dated 10/03/05 (2 pages)

AGENCY EXHIBITS:

Exhibit A: Appeal Summary dated 10/27/05 (9 pages)