

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5067184332	MEDINA	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1311514	MED	OVERRULED
No Compliance Required		
Decision Date:	01/28/2008	
Request Date:	10/13/2006	
Hearing Officer:	DEMETRA PETROS	

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State Hearing Decision

**ISSUE SECTION – APPEAL #1311514 (MAJ) (AA-1142)**

A state hearing was initially held on 01/17/07 regarding a request filed by the Appellant’s parents disputing the Medina County Board of MR/DD asserting that there were no Level One Waiver slots available for the Appellant and MR/DD’s determination that the Appellant did not meet the criteria for emergency status. The original state hearing decision overruled that appeal and the parents then requested an Administrative Appeal of that decision. The Administrative Appeal vacated and remanded the original state hearing for a supplemental hearing.

The issue for the supplemental hearing is whether the Hearing Officer recorded and accepted all documentation that was submitted to be included in the appeal. Each piece of documentation that was submitted for the initial hearing was reviewed at the supplemental hearing. No exhibits that were submitted by either party were omitted from the 2/27/07 decision. The original hearing decision was Overruled by the Hearing Officer. Based on the supplemental hearing it is recommended that the decision remains overruled.

**PROCEDURAL MATTERS**

The Appellant initial request for a state hearing was received by the State of Ohio on 10/13/06. The state hearing was initially scheduled for 01/08/07, however was rescheduled to 01/17/07 per the representatives’ request. A state hearing decision was issued on 02/27/07 which overruled the initial appeal. On 04/26/07 the Administrative Appeal decision vacated and remanded the original decision to schedule a supplemental hearing. The supplemental hearing was scheduled for and held on 09/10/07 via a telephone conference call from the Agency’s office. Testimony for Medina County Board of MR/DD was presented by Joseph Khadige, Service and Support Administrator and D. Keith, Eligibility Specialist, represented the Medina CDJFS. The Appellant’s mother attended the hearing on behalf of the Appellant.

**FINDING OF FACT**

## STATE HEARING DECISION CONTINUATION

1. On 10/13/06 a state hearing request was received on behalf of the Appellant in dispute of MR/DD's determination that their Agency was unable to provide the Appellant a Level One Waiver slot as not slots were available and their finding that the Appellant did not meet the criteria for emergency status.
2. On 01/17/07 a state hearing was held regarding the 10/13/06 request.
3. On 02/27/07 a state hearing decision was issued overruling appeal #1311514.
4. On 04/26/07 the Appellant's mother requested an Administrative Appeal of the 02/27/07 decision.
5. The Administrative Appeal decision found that the hearing record was unclear as to whether the Hearing Officer received and/or included several unspecified doctor reports referred to by the Appellant's mother during the initial hearing.
6. The Administrative Appeal vacated the initial hearing decision and remanded it for a supplemental hearing.
7. Each piece of documentation from the original hearing was reviewed with all parties during the supplemental hearing.
8. The documentation entered in the original hearing decision was the same documentation presented at the supplemental hearing. The only new documentation was a Life Plan which was signed in **March 2007, after the hearing decision was issued.**

## CONCLUSIONS OF POLICY

### Policy

The administrative appeal decision shall vacate the initial decision and remand the case to the original hearing officer when the hearing examiner determines the record developed does not contain sufficient information to decide the appeal. If the administrative appeal decision specifically requires the convening of a supplemental hearing, that order shall be followed.

Ohio Admin. Code § 5101:6-8-01 (2003)

The hearing officer's finds of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties.

Ohio Admin. Code § 5101:6-7-01 (C)(1)(2003)

### Analysis

The Administrative Appeal remand was based on the Appellant's mothers statements that she had proffered documentation during the initial hearing and that the examiner was unable to determine whether the Hearing Officer was in receipt of the unspecified medical documentation

STATE HEARING DECISION CONTINUATION

as no items were listed under the Appellant's exhibits. During the supplemental hearing the Appellant's mother stated that during the initial hearing, which was also conducted via telephone, she had given documents to the Agency to fax to the Hearing Officer at the conclusion of the hearing. The Agency testified that **all of the verifications** that were addressed during the initial hearing were faxed to the Hearing Officer at the conclusion of the hearing. The exhibits were reviewed in length during the supplemental hearing. The documents submitted were read into the hearing record page by page and each citing the specifics of each page of the document. The consensus was that the only additional document submitted that was not submitted with the initial hearing was the Life Plan Cover Sheet with attached Life Plan (Exhibit G). It was noted several times by the Hearing Officer that this documentation was not submitted for review until 04/26/07. The hearing decision was rendered on 02/27/07. In addition to the documentation being submitted two months after the Hearing Officer issued the decision, this documentation could not have possibly been available by either the Appellant's representative or MRDD because the Life Plan itself was not even in existence until **03/16/07** which is the date the Appellant's mother signed and acknowledged the Life Plan. When the initial hearing was conducted the Appellant stated she had additional information to submit. During the supplemental hearing it was confirmed that all documents given to the Agency by both parties were faxed to the Hearing Officer immediately after the hearing. This was also confirmed by reviewing each and every exhibit page by page to ensure all the verifications referred to were actually received by the Hearing Officer. These were submitted with the original hearing decision and the basis for the Hearing Officer's findings.

As stated above the only additional documentation that the parties wanted the Hearing Officer to include in the hearing record was exhibit G, the Life Plan. However, while the Appellant asserts the Hearing Officer failed to include the proffered unspecified doctor reports, she did not specify any additional documentation that she felt the Hearing Officer had not addressed. In fact the only additional documentation the parties kept referring to was the Life Plan that was not even entered into until a month after the decision was rendered. The Hearing Officer's findings were based on the documentation submitted along with the testimony presented by both parties. The parties are asking the Hearing Officer to consider an agreement entered into by the Appellant's representative and MRDD that took place **a month after the hearing decision was rendered**. The request for the initial hearing was received on 10/13/06 as the Appellant's mother requested the MRDD provide a Level One Waiver slot for the Appellant based on the criteria of emergency status. The initial hearing held on 01/17/07 was to address whether the action was correct. The documentation submitted in April 2007 would not be relevant to a decision made by MR/DD back in Oct. 2006. The purpose of a hearing is to determine whether the Agency's action or inaction on a case is correct based on the situation and circumstances that were in place at the point that decision was made.

The supplemental hearing did not disclose any additional documentation pertaining to the state hearing request of 10/13/06. The exact same documents (exhibits) that were referred to in the original decision rendered on 02/27/07 were submitted at the supplemental hearing. The only additional information that was submitted was dated **after** the 02/27/07 hearing decision was rendered and therefore would not have been available to the Hearing Officer prior to rendering the decision. The only new information was the result of an agreement entered into and submitted two months after the decision was issued and a memo sent by the Appellant to ODJFS on 09/10/07 which included a letter from the Appellant's doctor dated August 30, 2007. A review of the previously submitted exhibits and the testimony presented by all parties support the

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initial hearing decision rendered on 02/27/07. While the Appellant's AA request was based on her belief that the Hearing Officer erred in not including all documentation submitted for review, no additional documentation was submitted and all previously submitted documents were reviewed and all were included in the hearing record. Based on the fact that all submitted documentation has been received and reviewed for the initial hearing and no additional documentation was submitted (except the agreement faxed 2 months after decision was rendered) it is recommended that the appeal be affirmed.

**HEARING OFFICER'S RECOMMENDATION**

Based on the record before me, I find

**APPEAL # 1311514 should be OVERRULED.**

**FINAL ADMINISTRATIVE DECISION AND ORDER**

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

**APPEAL #1311514 is OVERRULED.**

Hearing Authority

January 28, 2008

**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 TOLEDO District hearing section at 1-866-635-3748.

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, OH 43218-2825 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 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 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.

**Aviso a la Apelante**

## STATE HEARING DECISION CONTINUATION

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.

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's Exhibits**

1. Request for state hearing filed on behalf of the Appellant received on 10/13/06.
2. Memo dated 09/10/2007 to Ohio Department of Job and Family Services citing non-compliance of the tie period that ODJFS has taken to schedule an appeal hearing and notations by the parents regarding inconsistencies in the initial appeal (2 pages).
3. August 30, 2007 Letter from Appellant's doctor regarding Appellant's medical conditions and the fact the he requires constant one-on one assistance for safety.

**Agency's Exhibits**

- A. Agency's prepared Appeal Summary (3 pages).
- B. Letter from Medina County MRDD dated 01/17/07 with attached medical documentation and evaluations that were submitted to the county by Appellant's mother regarding Appellant's medical care and progress (6 pages).
- C. Behavior Assessment System for Children, Second Edition Parent Rating Scales completed by Appellant's mother on February 19, 2006 (3 pages).
- D. Behavior Assessment System for Children, Second Edition Teacher Rating Scales completed on 02/27/06 (3 pages).
- E. Medina County Board MRDD Behavior Support Plan signature date by MRDD 07/13/06 (6 pages).
- G. Life Plan Cover Sheet with attached Life Plan signed and acknowledged by Appellant's mother on 03/16/07 and the MR/DD Representative on 03/20/07 (4 pages). **Acknowledged by MR/DD that signature date is after the state hearing decision was issued on 02/27/07.**
- H. Hearing decision issued 02/27/07 addressing hearing request date of 10/13/06, heard 01/17/07 (6 pages).